

United States
Circuit Court of Appeals [✓]

For the Ninth Circuit.

WILLIAM GLADSTONE, alias WILLIAM
VINES and MORRIS FRIEDLANDER,
alias H. FRANKLIN,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

Filed

AUG 30 1917

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM GLADSTONE, alias WILLIAM
VINES and MORRIS FRIEDLANDER,
alias H. FRANKLIN,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Morris Friedlander.....	41
Affidavit of A. Gladstone.....	39
Assignment of Errors	91
Attorneys, Names and Addresses of.....	5
Bill of Exceptions	37
Certificate of Clerk to Judgment-roll.....	36
Certificate of Clerk U. S. District Court to Transcript of Record	96
Citation	3
Defendants' Proposed Bill of Exceptions.....	37
Indictment	5
Instructions of the Court to the Jury.....	19
Motion for Continuance	38
Motion for New Trial	32
Minutes—January 17, 1916—Trial.....	8
Minutes—September 12, 1916—Trial (Con- tinued)	9
Minutes—September 13, 1916—Trial (Con- tinued)	16
Names and Addresses of Attorneys.....	5
Order Allowing Writ of Error and Super- sedeas	94
Order Enlarging Time to File Transcript of Record	98

Index.	Page
Petition for Writ of Error	88
Praeceptum for Transcript of Record	95
Sentence	34
TESTIMONY ON BEHALF OF PLAINTIFF:	
BURCH, CHARLES E.....	45
Cross-examination	46
DAVIDSON, D. J.....	65
Cross-examination	67
FULLERTON, EARL R.....	68
Cross-examination	74
KENNEDY, HORACE W.....	63
Cross-examination	63
Redirect Examination	65
LANDIS, WILLIAM	58
Cross-examination	61
Redirect Examination	62
RIGGLE, BELLE M.....	68
RYNNING, THOMAS L.	53
Cross-examination	56
TESTIMONY ON BEHALF OF DEFENDANTS:	
CARSE, WILLIAM	77
Cross-examination	77
FRIEDLANDER, MORRIS	78
Cross-examination	80
Redirect Examination	85
MORGANSTERN, ALFRED	47
Cross-examination	50
Verdict	31
Writ of Error	1

*In the District Court of the United States, for the
Southern District of California, Southern Divi-
sion, Ninth Circuit.*

No. 1063—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM VINES and H. FRANKLIN,

Defendants.

Writ of Error.

United States of America,—ss.

The President of the United States of America to
the Honorable the Judge of the District Court
of the United States for the Southern District
of California, Southern Division, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court before you, between William
Vines and H. Franklin, plaintiffs in error, and the
United States of America, defendant in error, a
manifest error hath happened to the great damage
of said William Vines and H. Franklin, plaintiffs in
error, as by their complaint appears:

We being willing that error, if any hath happened,
should be duly corrected, and full and speedy justice
done to the parties aforesaid, in this behalf, do com-
mand you, if judgment be therein given, that then,
under your seal, distinctly and openly, you send the
record and proceedings aforesaid with all things con-
cerning the same to the United States Circuit Court
of Appeals for the Ninth Circuit, together with this

Writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of [4*] Appeals to be then and there held, that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 2d day of October, in the year of our Lord one thousand nine hundred and sixteen.

[Seal] WILLIAM M. VAN DYKE,
Clerk of the District Court of the United States for
the Southern District of California.

By Leslie S. Colyer,
Deputy Clerk.

The above Writ of Error is hereby allowed.

OSCAR A. TRIPPET,
District Judge.

I hereby certify that a copy of the within Writ of Error was on the 6th day of October 1916, lodged in the clerk's office of the said United States District Court, for the Southern District of California, Southern Division, for said defendant in error.

WILLIAM M. VAN DYKE,
Clerk of the District Court of the United States
for the Southern District of California.

By Chas. N. Williams,
Deputy Clerk. [5]

*Page-number appearing at foot of page of original certified Transcript of Record.

[Endorsed]: No. 1063—Crim. In the United States District Court, for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. William Vines and H. Franklin, Defendants. Writ of Error. Filed Oct. 2, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [6]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 1063—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM VINES and H. FRANKLIN,

Defendants.

ORDER ALLOWING WRIT OF ERROR AND
SUPERSEDEAS.

Citation.

United States of America,
Southern District of California,
Southern Division,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit to be held at the city of San Francisco, in the State of California, within thirty days from date hereof, pursuant to a Writ of Error on file in the clerk's office of the District Court of the United States, for the Southern District of Califor-

nia, Southern Division, in that certain cause numbered 1063—Crim. in said District Court, wherein William Gladstone, *alias* William Vines and Morris Friedlander *alias* H. Franklin are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment given, made and entered against the said William Gladstone, *alias* William Vines and Morris Friedlander, *alias* H. Franklin, plaintiffs in error, in said Writ of Error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

[7]

WITNESS, the Honorable OSCAR TRIPPET, United States District Judge for the Southern District of California, this 2d day of October, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States the one hundred and fortieth.

OSCAR A. TRIPPET,
District Judge. [8]

[Endorsed]: No. 1063—Crim. In the District Court of the United States for the Sou. Dist. of California. United States of America, Plaintiff, vs. William Vines and H. Franklin, Defendants. Citation. Filed Oct. 2, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk.

Copy of within Citation received this 2d day of October, 1916.

ROBERT O'CONNOR,
Asst. U. S. Atty. [9]

Names and Addresses of Attorneys.

For Plaintiffs in Error:

A. I. MORGANSTERN, Esq., 401-406 Timken Building, San Diego, California, and PAUL W. SCHENCK, Esq., 619-26 Homer Laughlin Building, Los Angeles, California.

For Defendants in Error:

ALBERT SCHOONOVER, Esq., United States Attorney, and ROBERT O'CONNOR, Esq., Assistant United States Attorney, Los Angeles, California. [10]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 1063—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM VINES, True Name ALEXANDER GLADSTONE, and H. FRANKLIN, True Name MORRIS FRIEDLANDER,

Defendants. [11]

In the District Court of the United States, in and for, the Southern District of California, Southern Division.

Indictment.

At a stated term of said court, begun and holden at the city of Los Angeles, county of Los Angeles,

within and for the Southern Division of the Southern District of California, on the second Monday of July, in the year of our Lord, one thousand nine hundred and fifteen;—

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That William Vines and H. Franklin, whose full and true names are, and the full and true name of each is, other than as herein stated, to the Grand Jurors unknown each late of the Southern Division of the Southern District of California, heretofore, to wit, on the 23d day of December, in the year of our Lord one thousand nine hundred and fifteen, in the County of San Diego, within the Southern Division of the Southern District of California and within the jurisdiction of this Honorable Court, did knowingly, unlawfully, wilfully and feloniously have in their possession, receive, conceal, transport and facilitate the transportation and concealment of a quantity of opium prepared for smoking, which said opium was then and there contained in one hundred eighty cans of the size and style commonly denominated five-tael, and which said opium had been imported into the United States subsequent to the first day of April, 1909, contrary to law, all of which was well known to the said William Vines and H. Franklin at the time they so received, concealed, transported and facilitated the [12] transportation and concealment of said opium.

Contrary to the form of the Statutes of the United

States in such case made and provided, and against the peace and dignity of the said United States.

ALBERT SCHOONOVER,

United States Attorney.

CLYDE R. MOODY,

Assistant U. S. Attorney.

[Endorsed]: No. 1063—Crim. United States District Court, Southern District of California, Southern Division. The United States of America, vs. William Vines and H. Franklin. Indictment for Viol. Sec. 2, Act Jan. 17, 1914. Having in Possession, Receiving, etc., Smuggled Smoking Opium. A True Bill. Edward B. Tufts, Foreman. Presented and filed in open court, this 7th day of January, A. D. 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. ———, United States Attorney. [13]

At a stated term, to wit, the January Term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Monday, the seventeenth day of January, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1063—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

WILLIAM VINES and H. FRANKLIN,
Defendants.

Minutes—January 17, 1916—Trial.

This cause having been called at this time for the arraignment of defendants; Clyde R. Moody, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in court, with their counsel, A. J. Morganstern, Esq., and John J. Sullivan, Esq.; and defendant Wm. Vines having been called and arraigned, having stated that his true name is Alex Gladstone, having waived the reading of the indictment, and, on being required to plead to said indictment, said defendant having pleaded not guilty as charged therein, which plea is now by order of the Court entered herein; and defendant H. Franklin having been called and arraigned, having stated that his true name is Morris Friedlander, having waived the reading of the indictment, and, on being required to plead thereto, having pleaded not guilty as charged therein; thereupon, on motion of Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States, it is ordered that this cause be, and the same hereby is continued until Monday, the 13th day of March, 1916, at 10 o'clock A. M., for the trial thereof, at San Diego, California, before the Court and a jury to be impanelled. [14]

At a stated term, to wit, the September Term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of San Diego, on Tuesday, the twelfth day of September, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1063—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM VINES, True Name ALEXANDER GLADSTONE, and H. FRANKLIN, True Name, MORRIS FRIEDLANDER,

Defendants.

Minutes—September 12, 1916—Trial (Continued).

This cause coming on at this time to be tried before the court and a jury to be impanelled; Robert O'Connor, Esq., and Clyde R. Moody, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; defendants being present on bail, with their counsel, A. J. Morganstern, Esq., and Paul Schenck, Esq.; John P. Doyle, one of the official shorthand reporters of this court, being present and acting as such; and the court having ordered that the trial proceed, and that a jury be impanelled herein; and the following twelve (12) petit jurors having been duly drawn, called and sworn on *voir dire*, to wit: Wm.

L. Thompson, Adolph Muehleisen, Fred T. Scripps, Albert J. Stokes, Alex. Pearson, W. J. S. Browne, G. Landweer, Benjamin Pike Boone, John Martin, E. J. Swayne, W. C. Weitzel and Geo. M. Selwyn; and said twelve jurors in the box having been examined by counsel for the Government and by counsel for defendants, and passed for cause; and Albert A. Stokes having been challenged peremptorily by the Government and excused; and E. J. Swayne having been peremptorily challenged by the defendants and excused; and Wm. L. Thompson having been peremptorily challenged by defendants and excused; and Geo. M. Selwyn having been peremptorily challenged by the Government and excused; and Adolph Muehleisen having been challenged peremptorily by the defendants and excused; and Fred [15] T. Scripps having been challenged peremptorily by the Government and excused; and the six jurors remaining in the box, to wit: jurors Alex. Pearson, W. J. S. Browne, G. Landweer, Benjamin Pike Boone, John Martin and W. C. Weitzel, having been accepted by counsel for the Government and by counsel for defendants and duly sworn as jurors to try this cause; and the following six (6) petit jurors having been duly drawn, called, and sworn on *voir dire*, in the place of the six jurors excused, to wit: J. D. Lane, Geo. F. Otto, Julius A. Heilman, Wesley P. Hale, J. P. Haddock and Wm. F. Jungk; and said last-named six jurors having been examined by counsel for the Government and by counsel for defendants and passed for cause; and J. D. Lane having been challenged peremptorily by defendants and excused;

and Wesley P. Hale having been challenged peremptorily by defendants and excused; and Wm. F. Jungk having been challenged peremptorily by the Government and excused; and the remaining three jurors, to wit, jurors Geo. F. Otto, Julius A. Heilman and J. P. Haddock, having been accepted by counsel for the Government and by counsel for defendants and duly sworn as jurors to try this cause; and, in place of jurors Lane, Hale and Jungk, the following petit jurors having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendants and passed for cause, to wit, jurors Samuel W. Hackett, Thos. I. Butler and Gilbert C. Arnold; and Thos. I. Butler having been challenged peremptorily by the defendants and excused; and Gilbert C. Arnold having been challenged peremptorily by the defendants and excused; and Samuel W. Hackett having been accepted by counsel for the Government and by counsel for defendants and duly sworn as a juror to try this cause; and, in place of jurors Butler and Arnold, the following petit jurors, to wit, F. E. Gressler and Jos. R. Blackwell, having been duly drawn, called, and sworn on *voir dire*, examined by counsel for the Government and by counsel for defendants and passed for cause, and thereupon challenged peremptorily by defendants and excused; and, in place of said jurors [16] Gressler and Blackwell, the following two (2) petit jurors, to wit, jurors John Gould and David Hitchcock, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendants and

passed for cause, and accepted respectively by counsel for the Government and by counsel for defendants and duly sworn as jurors to try this cause; and the impanellment of the jury being concluded, said jury as so impanelled and sworn consisting of the following named jurors, to wit:

JURY:

- | | |
|----------------------|------------------------|
| 1. Alex. Pearson, | 7. Geo. F. Otto, |
| 2. W. J. S. Browne, | 8. Julius A. Heilman, |
| 3. G. Landweer, | 9. J. P. Haddock, |
| 4. Benj. Pike Boone, | 10. Samuel W. Hackett, |
| 5. John Martin, | 11. John Gould, |
| 6. W. C. Weitzel, | 12. David Hitchcock. |

And the Court having admonished the jurors that, during the progress of this trial, they are not to permit other persons to speak to them about this case or anything connected with this case, nor themselves speak to other persons about this case or anything therewith connected, and that, until this case is given them for consideration under the instructions of the Court, they are not to speak to each other about this case or anything connected with it; it is, at the hour of 12:05 o'clock P. M., by the Court ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day, until which time the jurors are excused.

* * * * * * * *

No. 1063—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

WILLIAM VIRES, True Name ALEXANDER
GLADSTONE, and H. FRANKLIN, True
Nome MORRIS FREDLANDER,
Defendants,

This cause coming on at this time to be further tried before the Court and a jury duly impanelled herein; Robert O'Connor, Esq., and Clyde R. Moody, Esq., Assistant U. S. Attorneys, appearing [17] as counsel for the United States; defendants being present on bail, with their counsel, A. J. Morganstern, Esq., and Paul Schenck, Esq.; John P. Doyle, one of the official shorthand reporters of this court, being present and acting as such; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and the indictment having been read to the jury by the clerk and defendants' pleas of not guilty having been announced to the jury by the clerk; and A. J. Morganstern, Esq., of counsel for defendants, having invoked the rule as to witnesses, it is ordered that all witnesses in this cause be excluded from the courtroom except when severally actually upon the witness-stand for the purpose of testifying; and Thos. H. Rynning and Wm. Landis and Horace U. Kennedy having respectively been called and sworn as witnesses on behalf of the United States, and hav-

ing given their testimony; and, in connection with the testimony of the last-named witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to wit, U. S. Ex. 1, Register of Hotel Cecil; and D. J. Davidson having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to wit, U. S. Ex. 2, Register of Hotel Panama; and Belle M. Riggle having been called and sworn as a witness on behalf of the United States, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered two exhibits, which are admitted in evidence in its behalf, to wit, U. S. Ex. 3, Register of Hotel Castle Ray; and U. S. Ex. 4, Affidavit of Morris *Friedland*; and court, at the hour of 3:17 o'clock P. M., having taken a recess for 13 minutes; and now, at the hour of 3:30 o'clock P. M., court having reconvened; and counsel, defendants and shorthand reporter being present as before; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and Earl [18] R. Fullerton having been called and sworn as a witness on behalf of the United States, and having given his testimony; and the Court having given the jury the usual admonition; and the jurors having thereupon, at the hour of 4 o'clock P. M., been excused until Wednesday, the 13th day of September, 1916, at 10 o'clock A. M.; and A. J. Morganstern, Esq., having moved the court that this cause is dismissed; it is thereupon

by the Court ordered that *that* defendants' motion for a dismissal of this cause be, and the same hereby is denied, to which ruling of the Court, on motion for a dismissal of this cause be, and the same hereby is denied, to which ruling of the Court, on motion of counsel for defendants and by direction of the Court, exceptions are hereby noted herein on behalf of said defendants; and proposed instructions to the jury having been considered and discussed by the Court and counsel; it is, at the hour of 4:15 o'clock P. M., ordered that this cause be, and the same hereby is continued for further trial until Wednesday, the 13th day of September, 1916, at 10 o'clock A. M.
[19]

At a stated term, to wit, the September Term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of San Diego, on Wednesday, the thirteenth day of September, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPETT, District Judge.

No. 1063-CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ALEXANDER GLADSTONE, Indicated as WILLIAM VINES, and MORRIS FRIEDLANDER, Indicated as H. FRANKLIN,
Defendants.

Minutes—September 13, 1916—Trial (Continued).

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Robert O'Connor, Esq., and Clyde R. Moody, Esq., Assistant U. S. Attorneys appearing as counsel for the United States; defendants being present on bail, with their counsel, A. J. Morgestern Esq., and Paul Schenck, Esq.; John P. Doyle, one of the official shorthand reporters of this court, being present and acting as such; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and Earl R. Fullerton, a witness heretofore sworn as a witness on behalf of the United States, having been recalled as a witness on behalf of defendants, and having given his testimony; and W. C. Carse having been called and sworn as a witness on behalf of defendants, and having given his testimony; and Morris Friedlander, one of the defendants, having been called and sworn as a witness on behalf of defendants, and having given his testimony; and defendants having rested; and the testimony being closed; and the Court having given the jury the usual admonition; and Court thereupon, at the hour of 10:54 o'clock A. M., having taken a recess for seven minutes; and now, at the hour of 11:01 o'clock A. M., court having reconvened; and [20] defendants, counsel and shorthand reporter being present as before and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present

in court; and this cause having been argued to the jury, on behalf of the Government, by Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States, and on behalf of defendants by A. J. Morganstern, Esq., of counsel for defendants and on behalf of the Government in reply by Robert O'Connor, Esq., Assistant U. S. Attorney, of counsel for the United States; and the court having given the jury the usual admonition; and court thereupon, at the hour of 11:57 o'clock A. M., having taken a recess until the hour of 2 o'clock P. M. of this day,

And now, at the hour of 2 o'clock P. M., Court having reconvened; and defendants and shorthand reporter being present as before; and counsel for the respective parties being present as before, except that Clyde R. Moody, Esq., Assistant U. S. Attorney, does not at this time appear as one of the Government's counsel; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and the Court having read to the jury its written instructions; and two court bailiffs (who are also Deputy U. S. Marshals) having been duly sworn to take charge of the jury; and the jury, at the hour of 2:15 o'clock P. M., having retired in charge of said sworn officers to consider their verdict; and the jury, at the hour of 2:57 o'clock P. M., having come into court; and defendants, counsel and shorthand reporter being present as at the convening of court at 2 o'clock P. M.; and all of said jurors being present in court;

and the jury having been asked if they have agreed upon a verdict, and having replied that they have not so agreed, and, at the request of the jury, the testimony of two witnesses having been read to the jury by the shorthand reporter, from the notes taken by him; and the jury, at the hour of 3:38 o'clock P. M., having again retired in charge of said sworn officers, further to consider their verdict; and the jury, at the hour of 4:25 o'clock P. M., [21] having again come into court; and defendants, counsel and shorthand reporter being present as before; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and the jurors having been asked if they have agreed upon a verdict, and having by their foreman replied that they have so agreed, and having been required to present their verdict, and their verdict having been read by the clerk; now, by direction of the court, said verdict is filed and recorded by the clerk, said verdict as so recorded being as follows, to wit:

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 1063—CRIM.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ALEX GLADSTONE, Indicated as WILLIAM VINES, and MORRIS FRIEDLANDER, Indicted as H. FRANKLIN,

Defendants.

Instructions of the Court to the Jury.

We, the jury duly impanelled in the above-entitled case, find the defendant, Alex Gladstone, indicted as William Vines, guilty as charged in the indictment, and the defendant, Morris Friedlander, indicted as H. Franklin, guilty as charged in the indictment.

San Diego, September 13th, 1916.

J. P. HADDOCK,

Foreman.

The jury recommends however, Morris Friedlander to the mercy of the court.

J. P. HADDOCK,

Foreman.

And said verdict having been read to the jury as so recorded, and the jurors having said that it is their verdict, it is now by the Court ordered that said jurors be, and they hereby are excused for the term and discharged, and it is further ordered that the U. S. Marshal for this District pay to said jurors their lawful fees for attendance and travel; and Robert O'Connor, Esq., Assistant U. S. Attorney, having moved for an increase of the bail of defendant Friedlander, it is by the Court ordered that said motion for an increase of bail of defendant Friedlander be, and the same hereby is denied; whereupon, good cause appearing therefor, it is ordered that for the sentence of defendants this [22] cause be, and the same hereby is continued until Monday, the 25th day of September, 1916, at 10 o'clock A. M., at Los Angeles, California, defendants in the meantime to remain at large upon their present bail.

[23]

There are two defendants on trial here. In these instructions, I have used the singular number instead of the plural, that is to say, I have used the word "defendant" throughout the instructions, but you shall consider that the instructions I give you relate to each defendant unless the contrary is specially pointed out in the instruction.

You shall decide this case upon the evidence introduced in the case, and not stricken out, and upon these instructions. Counsel have been permitted to argue the case for the plaintiff and for the defendant. This is for the purpose of aiding you to arrive at a verdict by understanding the evidence and the belief of counsel as to the guilt or innocence of the defendant, should have no weight with you in considering your verdict, but you should consider the evidence alone and these instructions in determining the guilt or innocence of the defendant. [24]

Instruction No. —.

You are instructed that the statute of the United States makes it unlawful for any person to fraudulently or knowingly transport, conceal, receive, buy, sell, or in any manner facilitate the transportation, concealment and sale of such opium, preparation or derivative thereof after importation knowing the same to have been imported contrary to law; and the law provides that on and after July 1, 1913, all smoking opium, or opium prepared for smoking found within the United States shall be presumed to have been imported after the first day of April, 1909, after which date all such importation was prohibited, and the burden of proof shall be on the accused in

whose possession such opium may be found to rebut such presumption. The law further provides that whenever, on trial for violation of this section, the defendant is shown to have, or to have had possession of such opium, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury. [25]

Instruction No. —.

The burden of proof is on the Government, and the Government must prove the defendant guilty beyond a reasonable doubt, before you can return a verdict of "guilty."

The Court will attempt to define to you what is meant by a reasonable doubt. It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they can say, they feel an abiding conviction, to a moral certainty, of the truth of the charge.

All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arises from the doc-

trine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.

Commonwealth vs. Webster, 59 Mass. 295.

This instruction has been specifically approved by the Supreme Court of the State of California in more than one hundred cases.

Judge. [26]

Instruction No. —.

You are instructed that upon the plea of “Not Guilty” the presumption of innocence of the defendant arises. That presumption accompanies him throughout the trial; it goes with you in your retirement to consider your verdict; it will avail to acquit the defendant unless it be overcome by sufficient proof of guilt. You must examine the evidence by the light of that presumption, and unless upon examining it you find it sufficiently strong to overcome

the presumption of innocence, he is entitled to an acquittal.

People vs. Winthrop, 118 Cal. 92. Decision by Justice Van Fleet.

Judge. [27]

Instruction No. —.

When possession of the opium is shown in the defendant by the evidence beyond a reasonable doubt, then the law places upon him the defendant, the burden of explaining that possession to your satisfaction.

You are not to infer from this statement that he must satisfy your minds beyond a reasonable doubt of the innocence of his possession, but the doctrine of reasonable doubt as to whether you are so satisfied applies to this element of the case, as to any other element. The burden does not shift to the defendant until you are first satisfied beyond a reasonable doubt, from the evidence, of the defendant's possession of the opium in question.

Judge. [28]

You are instructed that if the evidence shows that a preparation of opium, such as is described in the complaint, was found in close proximity to the defendant, but under such circumstances as warrants an honest belief that such preparation was under the dominion or control of someone else other than the defendant, your verdict must be "Not Guilty."

Requested by defendant and —.

Judge. [29]

To warrant a conviction of the defendant he must be proven to be guilty so clearly and so conclusively that there is no reasonable theory upon which he can be innocent when all the evidence in the case is considered together.

Requested by the defendant and _____.

_____,
Judge. [30]

It is not your duty to look for some theory upon which to convict the defendant, but on the contrary, it is your duty and the law requires you, if you can reasonably do so, to reconcile any and all circumstances that have been shown, with the innocence of the defendant, and so acquit the defendant.

Requested by the defendant and _____.

_____,
Judge. [31]

You are instructed that you must not suffer yourselves to be prejudiced against the defendant because of the fact that he is charged with this offense, and you must not suffer yourselves to be led to convict the defendant for fear that a crime may go unavenged, or for the purpose of deterring others from the commission of like offenses.

No such argument or reason can be weighty enough to justify you in laying aside or ignoring that just and most humane rule of law which says that you must acquit the defendant unless every fact necessary to establish his guilt has been proven to you beyond a reasonable doubt.

Requested by the defendant and _____.

_____,
Judge. [32]

Every crime which is punishable under the law consists of certain prescribed essential elements and these essential elements must be proved to you beyond a reasonable doubt.

It is the law, that even though every essential element of an offense, except one essential element thereof, be proved so clearly and so conclusively that there is absolutely no doubt remaining in the minds of the jury as to those elements, still you must not suffer yourselves to convict the defendant as long as that one essential element remains unproved or so long as you entertain a reasonable doubt as to that one essential element.

You are not permitted to infer or to presume the existence of the one essential element remaining unproved, in such a case as I have mentioned, nor are you permitted to assume that because every essential element except one has been proved, the one unproved is more likely to exist than not to exist.

Requested by defendant and _____.

_____,
Judge. [33]

You are instructed that the defendant in this case is not to be presumed to know anything because he ought to have known it. The presumption of innocence with which the law clothes the defendant is sufficient to overcome a presumption which might prevail in a civil case that he knew because he ought to have known.

Requested by the defendants and _____.

_____,
Judge. [34]

You are instructed where circumstantial evidence is relied upon to establish the guilt of the defendant it is not only necessary that all the circumstances concur to show the facts so to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion.

If the evidence can be resolved either with the theory of innocence or with guilt the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted.

Requested by the defendant and _____,

Judge. [35]

Before you can convict the defendant upon any statement claimed by the officers to have been made by him to them, you must believe that he did in fact make such a statement, that it is true in fact, that it is consistent and harmonious with the other evidence in the case and that it was voluntarily and intelligently made.

Requested by the defendant and _____,

Judge. [36]

Instruction No. —.

You are instructed that you are the sole judges of the credibility of the witnesses, and in determining that credibility you may take into consideration the manner of the witness on the witness-stand, the likelihood or unlikelihood of the truth of his story, the opportunities apparent from the testimony which the witness may have for knowing the truth, and whether or no the testimony of the witness has

been successfully impeached; and if you believe from the evidence that any witness has wilfully testified falsely with respect to any material matter involved in his testimony, you should distrust the testimony of such witness, and you have a right to disregard it altogether.

Judge. [37]

Instruction No. ———.

If you find from the testimony that any witness has been convicted of a felony, you are to regard such fact as affecting the credibility of the witness for truth, honesty and integrity, and while you are not to arbitrarily reject the testimony of a witness who has been convicted of a felony, such fact is to be considered by you in determining what credit, if any, you will give to the testimony of such a witness.

129 Cal. 258.

Judge. [38]

You are instructed that you are not to discuss, consider or permit to influence your verdict in this case, the fact that the defendant Gladstone has failed to become a witness before you. He has a right under the law to rely upon the failure of the prosecution to prove the charge against him and he is not to be prejudiced in your minds because he did not see fit to become a witness before you in his own behalf.

Requested by the defendant and ———.

Judge. [39]

You are instructed that the testimony of the defendant Friedlander is not to be weighed or judged differently from that of any other witness, and that you have no right to disregard the testimony of the defendant on the grounds alone that he is the defendant and stands charged with the commission of a crime. He is presumed to speak the truth, and unless this presumption is destroyed by other evidence in the case, you should consider that he has spoken the truth. You should fairly and impartially consider his testimony with all other evidence in this case, and if from all the evidence you have a reasonable doubt as to his guilt, you should find him not guilty. In determining the weight and effect to be given to his testimony, in addition to noticing his manner of testifying, and the probability of his statements, taken in connection with all the evidence in the case, you may consider the situation under which he has testified, that is, his relation to the case and his interest in the result of the trial.

[40]

If, after a consideration of the whole case, any juror should entertain a reasonable doubt of the guilt of the defendant, it is the duty of such juror so entertaining such doubt not to vote for a verdict of "guilty" nor to be influenced in so voting, for the single reason that a majority of the jurors or even all the other jurors should be in favor of the verdict of guilty. The defendant is entitled to the individual opinion of each and every juror and no juror should surrender his opinion merely because the other jurors disagree with him therein so long

as he has a reasonable doubt.

This does not mean that you shall not fairly and impartially discuss the whole case together in order that you may agree upon and render a true and just verdict, and it is your duty to so agree if you can conscientiously do so.

Judge. [41]

Instruction No. —.

The Court instructs you that you must determine from the evidence the guilt or innocence of the defendants separately—that one may be guilty and another may be innocent. You must apply the evidence to each and decide from the evidence, as applicable to each, whether either or both are guilty or innocent of the offense charged. You may convict both, or acquit both, or convict one and acquit the other.

Judge.

[Endorsed]: 1063—Crim. U. S. Dist. Court, So. Dist. Cal., So. Div. U. S. vs. Vines & Franklin. Instructions Given by the Court. Filed Sept. 13, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [42]

The law presumes the defendant to be innocent of the commission of any crime and this presumption continues in his favor throughout the trial of the case step by step, and goes with you into the jury-room to aid you in the consideration of the evidence produced before you, and the defendant is at all times to be by you presumed to be innocent of any crime

charged against him in the indictment herein, until his guilt is established to your entire satisfaction and beyond a reasonable doubt. And if the evidence in this case does not satisfy your minds beyond a reasonable doubt, of the guilt of the defendant, or does not prove beyond a reasonable doubt any one of the elements necessary to constitute the crime or crimes charged in the indictment, you must acquit the defendant.

Requested by the defendant and _____,

_____,
Judge. [43]

You are instructed that the testimony of the defendant Friedlander is not to be weighed or judged differently from that of any other witness, and that you have no right to disregard the testimony of the defendant on the grounds alone that he is the defendant and stands charged with the commission of a crime. He is presumed to speak the truth, and unless this presumption is destroyed by other evidence in the case, your oaths require you to find that he has spoken the truth. You should fairly and impartially consider his testimony with all other evidence in this case, and if from all the evidence you have a reasonable doubt as to his guilt, you should find him not guilty.

_____,
Judge.

[Endorsed]: 1063—Crim. U. S. Dist. Court, So. Dist. Cal., So. Div. United States vs. Vines & Franklin. Instructions Requested by Defendants.

Filed Sept. 13, 1916. Wm. M. Van Dyke, Clerk.
By Leslie S. Colyer, Deputy Clerk. [44]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. 1063—CRIM.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

ALEX GLADSTONE, Indicted as WILLIAM
VINES, and MORRIS FRIENDLANDER,
Indicted as H. FRANKLIN,
Defendants.

Verdict.

We, the jury duly impanelled in the above-entitled case, find the defendant, Alex Gladstone, indicted as William Vines, guilty as charged in the indictment, and the defendant, Morris Friedlander, indicted as H. Franklin, guilty as charged in the indictment.

San Diego, Sept. 13, 1916.

J. P. HADDOCK,
Foreman.

The jury recommends, however, Morris Friedlander to the mercy of the Court.

J. P. HADDOCK,
Foreman.

[Endorsed]: 1063—Crim. U. S. Dist. Court., So. Dist. Cal., So. Div. U. S. vs. Vines & Franklin. Verdict. Filed Sept. 13, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [45]

In the District Court of the United States, for the Southern District of California, Southern Division, Ninth Circuit.

No. 1063-CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM VINES and H. FRANKLIN,

Defendants.

Motion for New Trial.

Come now the defendants William Vines and H. Franklin, and move this Honorable Court that they be granted a new trial, and for grounds of this motion allege:

A. That the Court misdirected the jury in questions of law.

B. That the Court erred in decisions of questions of law arising during the course of the trial.

C. That the verdict is contrary to the law.

D. That the verdict is contrary to the evidence.

E. That the verdict is contrary to the law and the evidence.

F. That the evidence is insufficient to justify the verdict.

G. That the Court erred in refusing each and every instruction requested by the defendants and refused by the Court.

H. That the Court erred in giving each and every instruction requested by the prosecution and given by the Court.

I. That the Court erred in modifying each and every instruction requested by the defendants and modified by the Court and thereafter given as modified by the Court.

A. J. MORGANSTERN,
PAUL W. SCHENCK,
Attorneys for Defendants.

[Endorsed]: No. 1063-Crim. In the United States District Court, for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. William Vines and H. Franklin, Defendant. Motion for New Trial. Received copy of the within motion this 2 day of Oct. 1916. C. R. Moody, Asst. U. S. Atty., Attorney for ———. Filed Oct. 2, 1916. [46] Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Paul W. Schenck, 619-26 Homer Laughlin Bldg., Los Angeles, Cal., F2151, Main 1005, Attorney for Defendants. [47]

At a stated term, to wit, the July Term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the second day of October, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1063-CRIM.—S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

ALEXANDER GLADSTONE, Indicted as WM.
VINES, and MORRIS FRIEDLANDER,
Indicted as H. FRANKLIN,
Defendants.

Sentence.

This cause coming on this day for the sentence of defendants; Robert O'Connor, Esq., and Clyde R. Moody, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; defendants being present on bail, with their counsel, Paul Schenck, Esq., and A. J. Morganstern, Esq.; Wm. C. Wren being present as shorthand reporter of the proceedings, and acting as such; and A. J. Morganstern, Esq., of counsel for defendants having moved the Court for a continuance of this cause for said sentence until return can be had from the authorities of this Government at Washington, D. C., on an application for an executive stay of proceedings in this cause, which motion is resisted by counsel for the Government; and said motion having been argued, in opposition thereto, by Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States, and in support thereof by A. J. Morganstern, Esq., of counsel for defendants; it is by the Court ordered that said motion of defendants for a continuance of this cause for the sentence of said defend-

ants be, and the same hereby is denied, to which ruling of the Court, on motion of defendants and by direction of the Court, exceptions are hereby entered herein on behalf of said defendants; and a motion for a new trial having been filed herein on behalf of defendants, and having been argued, in support of said motion by A. J. Morganstern, Esq., [48] of counsel for defendants; it is by the Court ordered that defendants' said motion for a new trial be, and the same hereby is denied, to which ruling of the Court, on motion of defendants and by direction of the Court, exceptions are hereby noted herein on behalf of said defendants; and defendants having been called for sentence; and statements concerning sentence having been made by Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States; the Court thereupon pronounces sentence upon said defendants for the offenses of which they now stand convicted, namely, the offenses of violations of Section 2 of the Act of Congress of January 17, 1914, having in possession, receiving, etc., smuggled smoking opium, as follows, to wit: The Judgment of the Court is, that the defendant Alexander Gladstone, indicted as William Vines, be imprisoned in the United States Penitentiary at McNeil Island, State of Washington, for the term of eighteen (18) months, and that the defendant Morris Friedlander, indicted as H. Franklin, be imprisoned in the County Jail of Los Angeles County, California, for the term of six (6) months; and the defendants, on motion of Robert O'Connor, Esq., Assistant U. S. Attorney, having been committed to the custody of the U. S.

Marshal; it is, on motion of said Robert O'Connor, Esq., Assistant U. S. Attorney, of counsel for the United States, ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day for hearing on a motion as to the amount to be fixed for bond for appearance of defendants pending appeal. [49]

*In the District Court of the United States, in and for
the Southern District of California.*

No. 1063-CRIM.—S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM VINES and H. FRANKLIN,

Defendants.

Certificate of Clerk to Judgment-roll.

I, Wm. M. Van Dyke, clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original Judgment entered in the above-entitled action; and I do further certify that the papers hereto annexed constitute the Judgment-roll in said action.

ARREST my hand and the seal of said District Court, this 7th day of October, A. D. 1916.

[Seal]

WM. M. VAN DYKE,

Clerk.

By Leslie S. Colyer,

Deputy Clerk.

[Endorsed]: No. 1063—Crim. In the District Court of the United States for the Southern District of California, Southern Division. The United States of America vs. William Vines et al. Judgment-roll. Filed Oct. 7, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Recorded Min. Bk. Book No. 25, page ——. [50]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 1063—CRIMINAL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

WILLIAM VINES and H. FRANKLIN,
Defendants.

Defendants' Proposed Bill of Exceptions.

Be it remembered that heretofore the Grand Jury of the United States, in and for the Southern District of California, did file and return unto the above-entitled court its indictment against the defendants William Vines and H. Franklin, and thereafter the said William Vines and H. Franklin appeared in said court, and having duly pleaded, as shown by the record herein, and the cause being at issue, the same came on for trial before the Honorable Oscar Trip-
pet, District Judge, and a jury duly impanelled, the United States being represented by Robert O'Connor, Esq., and Clyde R. Moody, Esq., Assistant United States Attorneys, and the defendants, Will-

iam Vines and H. Franklin, being represented by Alfred Morganstern, Esq., and Paul W. Schenck, Esq., the following proceedings were had.

Mr. MORGANSTERN.—We desire to file at this time, your Honor, the following motion for continuance.

Motion for Continuance.

Come now the defendants in the above-entitled action by A. J. Morganstern, Esq., their attorney, and move a continuance of the trial in the above-entitled matter, and for ground of such proposed continuance specify:

That heretofore a stipulation was had by and between John B. Elliott, Collector of Customs for the Port of Los Angeles, [51] and A. J. Morganstern, Esq., attorney for the above-named defendant. The nature of which and the full purpose of which are set out in the affidavits of A. Gladstone and Morris Friedlander, on file herein, hereby referred to and by such reference made a part hereof as fully as though the same had been specifically herein impleaded. It is now apparent to the defendants and to their counsel that there is no intention upon the part of the Government to keep the said stipulation and the purpose of the proposed continuance is to enable the above-named defendants to apply to the President of the United States for executive action in the matter, in the manner by law provided.

This motion will be based upon the affidavits of A. Gladstone, Morris Friedlander and C. E. Burch, filed herein, and upon the records and files in the above-entitled court in the above-entitled cause.

Dated at San Diego, California, September 12,
1916.

A. J. MORGANSTERN,
Attorneys for Defendants. [52]

Affidavit of A. Gladstone.

United States of America,
State of California,
County of San Diego,—ss.

A. Gladstone, being first duly sworn on his oath
deposes and says:

I am one of the defendants named in the foregoing
proceeding and was with my codefendant arrested in
the county of San Diego, State of California, and
lodged in the county jail in said county; that while
so incarcerated I retained A. J. Morganstern, Esq.,
as and for my attorney in the above-entitled pro-
ceeding; that I was advised by the said A. J. Morgan-
stern that he had had a conference with Hon. John
B. Elliott, Collector of Customs for the Port of Los
Angeles, and that the said Elliott had agreed with
him, said Morganstern, that if I would truthfully
disclose where the opium was obtained which I was
charged with transporting and where it was to be
delivered, that recommendation would be made to the
office of the District Attorney that the case against
Friedlander, otherwise known as Franklin, would
be dismissed, or that a *nolle prosequi* would be en-
tered therein as to him, and that upon my plea of
“guilty” a nominal fine would be suggested to the
Court as satisfactory to the Government; I there-
upon agreed to make full and complete disclosure as
I could, and within a day or two thereafter was taken

to the office of Mr. Elliott in the Federal Building, in San Diego, and there in the presence of the U. S. Commissioner Burch, John B. Elliott and my attorney, Mr. Morganstern, the same stipulation which Mr. Morganstern had repeated to me was again entered into between Mr. Morganstern and Mr. Elliott in the presence of Commissioner Burch and myself, and I was assured by Mr. Elliott that nothing which I might say would be used against me, or for any other purpose than for the purpose of carrying out the said agreement and stipulation; I thereupon told Mr. Elliott all I knew of the transaction from beginning to end fully, fairly and truthfully. I am now informed by my said attorney, and upon [53] information and belief allege the fact to be, that there is no intention upon the part of the Government represented by its said Collector of Customs, to carry out the promise made to me. Upon a later occasion upon an application addressed to the above-entitled court, Judge Cushman presiding, wherein it was sought to have the bail of Mr. Friedlander, my codefendant, reduced from \$5,000 to \$2,000, the Assistant District Attorney present started to read from a transcription of my statement to Mr. Elliott and sought to use the same in contesting the application for reduction of bail, and did read a portion thereof until stopped by the Court, upon objection from Mr. Morganstern, from further using the same.

A. GLADSTONE.

Subscribed and sworn to before me this 12th day of September, 1916.

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern District of
California.

By Lester S. Colyer,
Deputy. [54]

Affidavit of Morris Friedlander.

United States of America,
State of California,
County of Los Angeles,—ss.

Morris Friedlander, being first duly sworn, upon his oath deposes and says:

I am one of the defendants named in the foregoing proceeding, sometimes called therein Franklin; while in company with Mr. Gladstone, my codefendant, I was arrested and incarcerated in the County Jail at San Diego, and shortly thereafter retained A. J. Morganstern, Esq., as my attorney to represent me; I was taken thereafter to the office of Mr. John B. Elliott, Collector of Customs, in the Federal Building, at San Diego, and there in the presence of Mr. Elliott, Mr. A. J. Morganstern and U. S. Commissioner C. E. Burch, was told by Mr. Morganstern that the purpose of my being called there was as follows:

That Mr. Gladstone had assured Mr. Elliott, the Commissioner, and Mr. Morganstern, that I had no knowledge whatever of the purpose of the trip Gladstone and I had taken, and was entirely unaware of the fact that opium was being transported, and that I played no part therein, and that it was stipulated

between Mr. Morganstern and Mr. Elliott that if both Gladstone and I should tell all we knew and should fully and fairly disclose the truth, that the case against me would be dismissed and that the Government would suggest a fine in the Gladstone case. Thereupon, in the presence of the persons stated, I fairly, fully and truthfully stated all that I knew about the trip to Mr. Elliott, expecting that as a result thereof the promise made on behalf of the Government by the said John B. Elliott *would kept*; that I am entirely innocent of any wrongful act charged against me in connection with the above-entitled matter.

MORRIS FRIEDLANDER. [55]

Subscribed and sworn to before me this 12th day of September, 1916,

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern District of
California.

By Lester S. Colyer,
Deputy.

The COURT.—Is the stipulation between you entered in writing?

Mr. MORGANSTERN.—No, your Honor; but if the Court wants further proof than that already submitted by way of affidavits we can make a further showing.

The COURT.—Did you apply last time to have the case dismissed and a *nolle pros.* entered?

Mr. MORGANSTERN.—No, your Honor. The matter was still in course of negotiation. Your Honor may remember that at the time the plea was

entered in this case I then stated to the Court that, with respect to the defendant Gladstone, we reserved the right to withdraw that plea at a future time and to plead guilty. At that time negotiations were in progress.

Mr. O'CONNOR.—Not with the District Attorney's office.

Mr. MORGANSTERN.—No; I am not making the slightest insinuation that the District Attorney was a party to the transaction.

Mr. O'CONNOR.—You knew at that time that the case was in the hands of the District Attorney's office, and from that time on, and there has been no negotiation with the District Attorney's office since the indictment.

Mr. MORGANSTERN.—Well, that is not quite right. At one conference between Mr. Elliott and myself Mr. Schoonover was present, and that was after the indictment, and Mr. Schoonover knew the statements that were being taken. I will make further showing on that subject, if necessary. Now we are ready to go to [56] trial in the Franklin case; but the defendant Gladstone has made a full and fair disclosure of the things he promised to disclose. That disclosure was made in the presence of his counsel. I think your Honor can readily understand the embarrassment in which counsel will find themselves in attempting to go to trial in a case of that character, and if we plead guilty, which is the only ready course open to us with propriety, we cannot avail ourselves of the proposition of executive clemency without the defendant suffering some punishment. The United States Commissioner, Mr. Burch, was

present at these conferences and conversations, and he is in the courtroom.

Mr. O'CONNOR.—I would like to have Mr. Burch called so far as the Government is concerned. We were only served with this motion this morning and have had no time to prepare an affidavit, of course.

The COURT.—Why didn't you make this application sooner, Mr. Morganstern?

Mr. MORGANSTERN.—There are two reasons, your Honor. The first I have already stated to the Court; the second is that the defendant Gladstone was not in San Diego nor where I could easily reach him for the purpose of obtaining a showing. He arrived in San Diego either last night or this morning.

Mr. O'CONNOR.—I think the testimony of Mr. Burch would show that there was no such offer made by Mr. Elliott as is contended for by counsel for defendant; and in the second place, the defendant has had six months in which to make his application to the President if such an application could be made and he has failed to do so. However, in the case of *United States vs. Lamar*, the Supreme Court held that the President was without power to grant a pardon prior to conviction, and likewise without power to suggest or direct the Attorney General to dismiss a case. He could advise him that he thought it might be dismissed, but had no power to direct him to dismiss it; that it is only after conviction [57] that an application to the President can be made for pardon.

The COURT.—Have you examined that case, Mr. Morganstern?

Mr. MORGANSTERN.—I have not, your Honor.

Mr. O'CONNOR.—I haven't the citation here, but I can easily find it. Of course, after conviction of plea of guilty, then the application could be made to the President.

The COURT.—Call the officer and let us hear what he says about it.

Testimony of Charles E. Burch, for Plaintiff.

CHARLES E. BURCH, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

My name is Charles E. Burch; I am United States Commissioner at San Diego; I know Mr. Morganstern, Mr. Gladstone, Mr. Friedlander, and Mr. Elliott, Collector of Customs of Los Angeles; as I recall the conversation that took place prior to the statements, with reference particularly to any promise of immunity—or the interrogatories, rather—that were propounded by Mr. Morganstern to Mr. Friedlander and Mr. Gladstone, it was to the effect that the two defendants wanted to make a statement with reference to their connection with this opium traffic, they having prior to that time been bound over by me, having been charged with having in their possession 75 cans of opium; as I recall the statement as made by Mr. Elliott to Mr. Morganstern, who was the attorney representing the two defendants, it was of a nature which would not justify the inference of an immunity; in other words, Mr. Elliott said, "Now, if these men have anything to say I will hear what they have to say"; that, in my

(Testimony of Charles E. Burch.)

mind, was about the sum and substance of the statements made by Mr. Elliott in the Collector of Custom's office; I can't recall in detail the conversation that took place, but there were no interrogatories, as I recall, propounded by Mr. Elliott to either of the two defendants; the [58] interrogatories were propounded by Mr. Morganstern.

Cross-examination by Mr. MORGANSTERN.

I happened to be called into that conference because I was in the United States Marshall's office when you entered the room and stated that you were going to have some sort of conference with Mr. Elliott and rather indicated the desire that I should be present rather than the marshal; I don't think you said you came at Mr. Elliott's request; when I reached the room where Mr. Elliott was and the defendant Gladstone, I did not hear any conversation between Mr. Elliott and Mr. Morganstern; there was no promise made by Mr. Elliott concerning a *nolle pros.* or anything of that kind; there was no promise made by Mr. Elliott of any immunity to this defendant Gladstone in the event he would tell truthfully where the opium was obtained and where delivered, because in the course of the interrogatories propounded by you, after an hour's time, the defendant seemed to desire to evade, or at least not to answer some question and Mr. Elliott said, "Now, if you are going to come in here and make any statements, we don't want to take up time by going away around about it. If you want to say anything, say it"; I don't recall Mr. Elliott asking any questions at all.

Testimony of Alfred Morganstern, for Defendants.

ALFRED MORGANSTERN, counsel for defendants herein, having been first duly sworn, testified as follows:

Shortly after the arrest of these defendants I had a conference with Mr. Evans, Deputy Collector in charge at Tia Juana, who made the arrest; I suggested to him the advisability of having these defendants fully disclose the truth because they might glean from them where this opium was coming from and where going; Mr. Evans agreed that it would be a wise matter to take it up with Mr. Elliott rather than himself; we waited for some days for Mr. Elliott to come; he was expected down for the opening of the race track and the arrangement of new conditions there; he [59] finally did come and we had a conference; Mr. Elliott said this was a large amount of opium and that he was anxious to know where it was going; I said, "Mr. Elliott, so far as Friedlander is concerned, I am satisfied of his innocence in the matter. So far as Gladstone is concerned, I have talked with him, and he is perfectly willing, in event we can make an agreement that the Government will respect, to tell you the entire truth." "Well," he says, "what sort of an agreement is that?" I says, "We want a *nolle pros.* in the Friedlander case, because I think from looking over the testimony on the preliminary examination before the master you will probably be able to satisfy yourself that he should not be bound over. So far as Gladstone is concerned, he is guilty, and if a nominal fine of some

(Testimony of Alfred Morganstern.)

sort could be recommended to the Court we would be satisfied with the arrangement." He wanted to know what I meant by a nominal fine; we discussed something about a thousand dollars; I thought that sort of fine could probably be paid; then we went up to Los Angeles again and came back the following day, or the second day; I met him in his office by appointment, in this building; Mr. Carse, the deputy marshal, brought the two defendants to the marshal's office; Mr. Elliott said, "I would rather you would go down and see Carse and have those men brought up here. He doesn't seem to want to bring them to my office." I says, "What is the matter—some friction between you and Carse?" and he said, "Something of that sort." When I went there Mr. Burch, the Commissioner, was also in the office; I called Mr. Burch out and asked him whether he would take charge of the defendants to come up to Elliott's office; when Mr. Gladstone, Mr. Burch and myself were seated in Mr. Elliott's office I repeated to Mr. Gladstone the conversation which I had theretofore had in his absence with Mr. Elliott and Mr. Elliott turned about and said, "That is correct"; he says, "We understand each other. And this deposition of yours or any statement you care to make in the matter along these lines will not be used against you for any other purpose or in any other fashion. What I want to know is where this stuff was coming from [60] and where it was going. If you can tell me that, you will render us a great service." Then Gladstone, largely at the interrogation of Mr. Elliott,

(Testimony of Alfred Morganstern.)

rather than myself, told the story; as he progressed Mr. Elliott would digress and take him off at an angle and go into details by way of interrogatories; Mr. Elliott at the time was making lead pencil notes of the conversation; wherever the statement was not as complete as I thought it should be I asked additional questions to seek to elicit the entire truth; later in the day Friedlander was brought up and the same situation gone into; much of the time of the Friedlander investigation was taken up in trying to determine how long Mr. Friedlander had known Gladstone, and how he happened to meet him and how he happened to come down here at this time; Friedlander at that time having been a sick man, and having been down, apparently, on the trip with Gladstone with no knowledge on his part as to where he was going or why; some few days later that I met Mr. Elliott in Los Angeles in his office; I had Mr. John J. Sullivan, of Seattle, former Deputy United States Attorney; at that time Mr. Schoonover was called into Mr. Elliott's office; Mr. Schoonover said, "We cannot *nolle pros.* this case, Mr. Morganstern, we cannot convict anybody else on this testimony." I said, "That was not agreed, Mr. Schoonover, with Mr. Elliott, nor was it ever discussed; no promise was ever made by me or by the defendants that they would give you evidence which would convict somebody else; I agreed with Mr. Elliott to have these defendants tell him whatever they knew about their trip, to have Gladstone tell him where the opium was obtained, how it was obtained, and whence it was to be

(Testimony of Alfred Morganstern.)

delivered, all of which Gladstone did, I thought at the time, fully and fairly." I had another interview with Mr. Elliott some time later in which he said that "that information didn't give us what we wanted"; I told him, "Mr. Elliott, I wish you would take this up with the District Attorney and look into the promise you have made and have him determine for you whether or not it ought to be kept, and let me know later what you think [61] about it"; that is the last I heard about it; I should think that was some four or five months ago, since the case was last called here; now, that is the situation as fully as I remember it; Mr. Elliott took notes about it; the next I knew of it is what occurs in the other affidavit, when motion was made to Judge Cushman to reduce the bail of Friedlander, which was reduced by Judge Cushman from \$5,000 to \$2,000, with a certain statement as to his whereabouts in the *intermin*, and one of the District Attorneys sought to use that statement that was made by Mr. Elliott and the Court stopped that proceeding; that is the entire conversation as I can remember it, then, and is as fully as I can possibly repeat it; there was never a moment's thought in my mind but what the agreement would be faithfully kept, if made in good faith; it was made after consultation with Mr. Evans, the man who arrested them, and who procured Mr. Elliott's attendance here for that very purpose.

Cross-examination by Mr. O'CONNOR.

Mr. Evans said it was a matter that would have to be taken up with Mr. Elliott; that he couldn't en-

(Testimony of Alfred Morganstern.)

gage in that agreement himself; Mr. Evans at the time of the request, came to my house, on Christmas day I think it was, to first discuss the matter; I first phoned him and asked him when he came over town to drop in and see me, which he did; at the time I asked Mr. Elliott these questions relative to what would be done if this statement was made I knew that Mr. Elliott was only a collector of customs and in no wise connected with the United States Attorney's office, but I also knew that the recommendation of the customs department in these matters has, as far as my observation goes, been usually respected; I wouldn't quite say that, as a matter of law, the Collector of Customs had nothing to do with prosecuting the case, but I knew that he was not a prosecuting officer; the promise was not that he would recommend it to the court, but that he would [62] recommend it to the prosecuting officer; I think the affidavit so states; I knew he did not have the power, himself, to do those things, but that he must apply to another party; I thought then, and I think now, that there is an equitable manner of enforcing that sort of an agreement when made by any public official who had in charge any part of the prosecution or investigation of a case; I knew that Mr. Elliott had nothing to do with the case other than the gathering of information; these negotiations started before the preliminary examination before the magistrate; after they were started, and after the conversations were had that I have related, I then suggested to Mr. Elliott that Mr. Schoonover be called into the matter

(Testimony of Alfred Morganstern.)

and consulted; when Mr. Schoonover came in he said he didn't think an agreement of that kind would be binding upon the Government unless it enabled them to convict somebody; he says, "I have gone over this statement of Mr. Elliott's and the statement made to Mr. Elliott, and I don't think it gives the information we are looking for," that was some time after they were bound over; this statement was made after they were bound over; prior to the taking of this statement I did not communicate directly with the United States Attorney's office and endeavor to have one of their assistants or Mr. Schoonover present and obtain an agreement directly from him as to what should be done, excepting in this fashion; that I told Mr. Elliott that these defendants were ready to make any statement they made to him either in court or to the United States District Attorney; I thought then, and still think, that the equitable right of the defendant does not depend upon the *peculiar* officer to whom he made his statement.

Q. (By Mr. SCHENCK.) I understood you to say that Mr. Elliott, after receiving this proposition, went up to Los Angeles and came back in a couple of days.

A. Yes, I think there were a couple of days intervening between the time of the agreement and the time of the actual making of the statement; my recollection is this—I may be in error about it however—that after the proposition was made and discussed [63] and accepted, then Mr. Elliott fixed the time when he would be here again to hear these

(Testimony of Alfred Morganstern.)

statements; that is my present recollection; I think that is correct too.

The COURT.—The motion for continuance will be denied.

Mr. MORGANSTERN.—Exception.

Testimony of Thomas L. Rynning, for Plaintiff.

THOMAS L. RYNNING, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows.

Direct Examination by Mr. O'CONNOR.

My name is Thomas L. Rynning; I am under-sheriff of this county; I have been under-sheriff a little over a year and a half; I know the defendants; I saw them the first time on the 23d of December last, 1915, in Spring Valley; at the time I saw them Mr. Fullerton, and another man that drove the automobile, Mr. Landis, and myself were present; the man I speak of is named George; it was about 11 o'clock in the morning; an automobile drove up to the water trough and stopped; we were there to intercept it; it was a 1914 Studebaker; we received a telegram from the sheriff at El Centro; I went up to the automobile, took from the automobile two cases, a suitcase and a black box, and placed two men under arrest that were in that car at that time, and brought them into the county jail and opened the boxes; these are two men I placed under arrest at that time.

Q. (By Mr. O'CONNOR.) What conversation did you have in the presence of these defendants when you first went up to the automobile?

(Testimony of Thomas L. Rynning.)

Mr. MORGANSTERN.—We object to any conversation either by or in the presence of the defendants which seeks to elicit any possible statement by the defendants or actions of the defendants, upon the ground that it is incompetent, irrelevant and immaterial until the *corpus delicti* shall first have been established.

The COURT.—State what was said. [64]

Mr. MORGANSTERN.—Exception.

A. I asked him who owned these two valises, the dress-suit case and the box, and they said, "I do"; both of them spoke at the same time, both Vines and Franklin.

Q. (By Mr. O'CONNOR.) State what was said and done next.

Mr. MORGANSTERN.—Same objection.

A. So I took one of them out, and Mr. Landis took the other; I asked for the keys; they said, "We know nothing about the keys at all. They are not ours"; that was immediately after they said "I do"; after I placed them on the ground.

Q. (Mr. O'CONNOR.) What else was said?

Mr. MORGANSTERN.—Same objection; and I understand our objection applies to all this class of testimony at this time, your Honor, and same exception reserved.

The COURT.—All right.

A. I said "You are both under arrest"; I placed Mr. Vines in an automobile with Mr.—Franklin was in the automobile with us and Mr. Vines got in with Mr. Landis; we drove in to the county jail; before

(Testimony of Thomas L. Rynning.)

we got to the county jail we met Mr. Evans; he proceeded down to the county jail with us and in their presence we opened the two receptacles—or the two boxes; “T. H. R. 12/23/15,” that is the mark I placed on the box at that time (referring to black box) you will find them on each of the boxes, and also on the separate one.

Mr. MORGANSTERN.—We will stipulate that the present contents of these grips here are the contents the officers found in the grips when they opened them; I don't think there is any necessity to prove that matter.

A. I had no conversation whatever with the defendants and no conversation occurred in my presence and in the presence of the defendants with reference to the suit cases at the county jail; no conversation occurred at the county jail, any more than that we brought them in there and booked them, and we turned them over to Mr. Evans, he being the Government man; we had no conversation any more than with any man that was arrested; they wanted to see the warrant and so forth; Vines made the remark at one time—whether it was in the county jail or right there at the place—he said, “My friend had nothing to do with this at all.” I don't recall whether he said that at the jail or at Spring Valley; the gentlemen at the table on this side is Vines; Mr. Vines made the remark [65] that his friend had nothing to do with it; at the jail they gave the names of Vines and Franklin; Vines and Franklin is what they were booked under; at the time I came up to

(Testimony of Thomas L. Rynning.)

the automobile and had conversation with them, nothing was said to me by either one of the defendants as to their relationship; in my presence at one time or another they said they were brothers; I don't know whether they said it or not, but during some conversation I was led to believe that they were brothers; I don't remember who said it; I had no conversation, *with* the presence of these defendants, with either George or Fullerton; nothing was said in the presence of the defendants by either George or Fullerton as to where the grips came from; they told me, but not in the presence of the defendants.

Cross-examination by Mr. MORGANSTERN.

When I stopped the car, or when I came up to the car there were four men in the car; at the time I approached the car one was out; just stepped out of the car; it was the man named George who had stepped out; at that time these grips were behind the front seat—or immediately in front of the rear seat; they were in the tonneau of the automobile; Mr. Vines was seated in the tonneau and Mr. Fullerton; Franklin, or Friedlander, was sitting in the front seat with the driver; neither of these grips were in the front seat; when I first approached the car I addressed myself to George, the driver; I said, "Where are the grips?" He said, "In the rear"; next I addressed myself to Vines and Franklin and Mr. Fullerton, all three in the car; I said, "Who owns these?" I was looking into the car; looking at Vines; Vines replied, "I do"; Fullerton never opened his mouth; Franklin, or Friedlander said

(Testimony of Thomas L. Rynning.)

“I do”; they both said, “I do” about together; I certainly saw Friedlander’s lips move at that time; he turned around and faced me; I stepped up to the left side of the automobile; Vines was seated on the opposite side and Friedlander on the right hand side on the left hand drive of the car; Friedlander was turned around *with* I walked up to the car before I spoke; it is not a fact that I ordered [66] everybody out of the car before I spoke; immediately afterwards I asked for the key; they both said that they had no key, that it was not theirs, or something of that sort; I did not break them open then; I sent them both down and they were broken at the county jail; after they said they had no key I took the keys out of Vines pocket and tried every key he had and they didn’t fit these grips; I took the keys out of Friedlander’s pocket at the county jail; I am not sure that either one of them had keys; one of them had keys but I don’t know which one; it might have been both; I have stated that I might have only got one set of keys; we searched them for guns, as I search anybody when I arrest them; I didn’t find any arms on then; I searched Mr. Fullerton, and asked him a great many questions about these things; he was placed under arrest until we was brought into San Diego, and Mr. Evans came right along and says, “We don’t want this man at all,” he told me all he wanted was these two men; that is all I know about it; the man whose name is George was driving the car; we did not search him for keys or arms; I asked him a great many questions; I asked him if he

(Testimony of Thomas L. Rynning.)

knew anything about this opium; I did not place him under arrest not even out there on the road; the grips that were in the automobile were covered, as near as I can recollect, with a robe; there was a robe or coat or something hanging on the rod; not particularly covered; a person riding in that car would have known there was something there under the robes; I said partially covered, I think.

Testimony of William Landis, for Plaintiff.

WILLIAM LANDIS, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows.

Direct Examination by Mr. O'CONNOR.

My name is William Landis; I am deputy sheriff, San Diego County; I have been deputy sheriff six years; I know the defendants Vines and Franklin; I saw them first on the morning of the [67] 23d of December, 1915, in Spring Valley; the under-sheriff, Rynning, was with me; the automobile came down the hill and stopped at the watering-trough; we walked up to the machine; the under-sheriff approached the machine on the north side and I walked around on the south side; I addressed my remarks mostly to Franklin; we asked them where they were going; they said they were going to San Diego; I says, "Have you got any baggage"? They says, "Yes"; then the under-sheriff asked him who those suitcases belonged to; I asked Franklin; Franklin said, "They belong to us"; then the under-sheriff took the suitcase and lifted it out on the north side of the machine; I lifted the other case out on the south

(Testimony of William Landis.)

side of the machine and was on the south side of the machine; I asked him where the keys were. He says, "I haven't any keys." I said, "Where is the keys so that we can open them?" He says, "I don't know; they don't belong to us." Vines said that; then the under-sheriff says, "Well, we will bust them open," and Vines says, "Well, I don't care, they are not ours." "Well," he said, "you just stated they belonged to you, several times." "Well, they are not ours," he says. Franklin was sitting in the front seat of the machine at that time; he hadn't gotten out yet; the first words I remember Vines saying was when we asked him for the keys; I don't remember what Vines told Rynning for I had charge of Franklin mostly; I was asking my questions of Franklin; there were no other grips, packages or baggage of any kind in the car; I think there was a robe, I wouldn't say positively there might have been an inner-tube lying in the back, I didn't notice; I had some conversation with Vines on the way to town; he wanted to know what business we had coming out there and stopping them; I told him we had a telegram to come out there and intercept a certain car and we were merely obeying orders; he said, "Are you not a deputy sheriff?" and I says, "I am." "Well," he says, "how comes it that the sheriff's office sticks into this kind of business?" I says, "I don't know; you will have to ask the sheriff in regard to that, because I am just obeying orders on that."

[68]

Q. (By Mr. O'CONNOR.) Well, with reference

(Testimony of William Landis.)

to the suitcases or their contents, or anything in connection with this case, was there any other conversation?

Mr. MORGANSTERN.—We desire to object to the testimony of this witness on the same lines as the objection heretofore interposed to the testimony of the witness Rynning as to any extra-judicial statements as to the defendants or either of them on the ground that the *corpus delicti* has not been established.

The COURT.—The objection is overruled.

Mr. MORGANSTERN.—Exception.

WITNESS.—Two suitcases were both placed in the machine I was driving; Mr. Vines was in the machine with me, in the front seat at the side of me; on the way in I asked him what was in the suitcases; he said he didn't know; I asked him different questions on the way in; I believe one question I asked him, I asked him what part of Frisco he was from; he looked at me and said, "Who said I was from Frisco?" I said, "Nobody, but I just asked you what part you were from." And then he said, "Who told you I was in Frisco?" I says, "No one told me." "Well," he says, "what made you ask that kind of a question?" I said, "I was just asking for information, just the same as anyone else would"; then he asked me where I was from and I told him where I was from; Vines said he made a trip to the valley with his brother; his brother was sick; he took his brother along for the trip; I had no other conversation in regard to his brother being

(Testimony of William Landis.)

sick; I didn't ask him what he went to the valley for; after we got to the jail the boys booked them; they booked one as Vines and the other as Franklin; Mr. Vines said, "The kid hasn't got anything to do with this." He says, "If anyone is to blame I will take all the blame." He said, "The kid is perfectly innocent of it." [69]

Cross-examination by Mr. MORGANSTERN.

When I first saw this automobile there were four men in it; the driver, George, and Mr. Franklin, were in the front seat, and Mr. Fullerton and Mr. Vines were in the rear; Vines was right back of Friedlander; Captain Rynning and I reached the car about the same time; George was the first one that spoke. He said, "We have got a flat tire." The under-sheriff says, "Well, where are you going?" He says, "We are going to San Diego"; then the under-sheriff asked Vines where they were going; he said they were going to San Diego too; Captain Rynning asked Vines whose baggage that was; I don't remember what Vines told him, for I asked Franklin about the same time; Franklin says, "It is our baggage." I didn't hear Vines answer at all; Friedlander was looking toward me for I was addressing him; he might have looked toward Vines when the under-sheriff was talking to Vines; he turned to the left, toward the seat at his side; I remember testifying as a witness upon the preliminary hearing in this case; I don't remember testifying upon that occasion, "No. He was pretty sick. He didn't say anything," because he didn't look sick to

(Testimony of William Landis.)

me; he was wrapped up; he didn't say much; he didn't say as much as Vines did; all I heard him say was in regard to the baggage, "It is ours"; after our conversation we put the baggage on the watering-trough; I asked Vines for the keys; he said he didn't have them; Rynning had some keys there; he tried to open the grips; I don't know where he got them; I heard Rynning ask George who the baggage belonged to; George said, "I suppose it belongs here to these fellows," probably from three to five minutes elapsed between the first question as to whose baggage it was and their statement that it wasn't their baggage; then they were asked for keys; I didn't search Franklin for guns; the under-sheriff told me to go get my machine and I went and got it and don't know what happened in the meantime; they told us they had no keys for those things; Captain [70] Rynning tried to open the grips with some keys; I don't know where he got them.

Redirect Examination by Mr. O'CONNOR.

I think the under-sheriff said we were officers from the sheriff's office before Franklin stated in answer to the question as to who owned the grips, that "they belong to us"; that was after Vines asked him what right we had to hold them up there.

Mr. MORGANSTERN.—So far as the defendants are concerned, it may be stipulated that the contents of these cans in these grips is opium prepared for smoking; we will also stipulate that the suitcases and opium may be referred to in argument without the necessity of introducing them in evidence.

Testimony of Horace U. Kennedy, for Plaintiff.

HORACE U. KENNEDY, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. O'CONNOR.

My name is Horace U. Kennedy; I am chief clerk of the Hotel Cecil; I have been such clerk about two years; that hotel is on Sixth street between B and C in San Diego; I have seen the defendants before; I think I saw them about the first of the year at the hotel; they stopped at the Cecil; that book, U. S. Exhibit No. 1 for Identification, is a hotel register of the Cecil Hotel; it shows the names of the persons who registered at that hotel on December 21; the name Vines is here; the initials are W. & H.; when they registered at the hotel is when I saw these two defendants; one registered and the other made the remark, "I will register," and he says, "I have registered for you"; they were assigned to the same room; afterwards there were two suitcases came in; those were the cases; they stayed at the hotel just that night; I should judge when they came in it was along in the [71] evening—seven o'clock; they came by stage; I am called at half past six and on at seven, and they had left then.

Cross-examination by Mr. MORGANSTERN.

The two gentlemen back of you are the two defendants; I think that gentleman right there (pointing to Franklin) did the registering; I wouldn't swear to it; I had never seen these two men before; I see by the register that this occurred about Decem-

(Testimony of Horace U. Kennedy.)

ber 24, 1915; I was mindful of the fact that this is the man that did the registering because I glanced up at the man when the other man made a request that he register and he made the remark that he had registered for him; I have no remembrance what date it was except that page there; those two grips are identified in my mind as the two grips carried by the men who came and registered that evening because they were left in the office all night with me; I only glanced at them; I saw them in the stage office next door; they were brought into the hotel afterwards while I was there; I identify them as the same grips because there are few grips left there at any time and the night clerk spoke to me; he said, "Now, there is two suitcases"; I was there when the suitcases came in; these gentlemen brought them in; I didn't say they were brought in from the stage office later; I said I saw them in the stage office; I couldn't say which gentlemen carried them; I never had seen these men before; I will not be positive which one registered; I may be mistaken about this man having done the writing; there was nothing about their conduct that particularly caused me to note them that evening; they were both at the counter together; one of them asked for a room; I could not recognize the man who registered by his voice; I saw them the next morning; I saw them again in the preliminary examination in this case; I did not testify before in the matter; the grips were brought in from the stage office and I couldn't say they were carried into the hotel by either of these men; I didn't see these two men bring them in. [72]

(Testimony of Horace U. Kennedy.)

Mr. O'CONNOR.—I desire to offer the register in evidence.

Mr. MORGANSTERN.—We object to it as wholly incompetent, irrelevant and immaterial.

The COURT.—The objection is overruled.

Mr. MORGANSTERN.—Exception.

Redirect Examination by Mr. O'CONNOR.

These men registered at the hotel on the date that appears at the top of that page, December 21.

Mr. MORGANSTERN.—The register may be stipulated as having been read and it can be read in argument if desired.

Testimony of D. J. Davidson, for Plaintiff.

D. J. DAVIDSON, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. O'CONNOR.

My name is D. J. Davidson; at present I live at Calexico; in December, 1915, I lived in El Centro; at that time I was manager of the Panama Rooms; that is a hotel; to my knowledge I can only recognize one of the defendants, the one on this side; I wouldn't recognize him by name; I have seen this man before at the Panama Rooms, but I don't recall the date; I think I have the register with me of the Panama Rooms.

Mr. O'CONNOR.—Refer to the register, please.

Mr. MORGANSTERN.—To which we object on the ground that it is not such a document or memorandum from which the witness may refresh his

(Testimony of D. J. Davidson.)

recollection as far as the present record is concerned. The proper foundation has not been laid.

The COURT.—The objection is overruled.

Mr. MORGANSTERN.—Exception.

WITNESS.—(Referring to register.) The date is December 22d; I just looked at page 15; the gentleman registered under the name of [73] W. Vines, in my presence.

Mr. O'CONNOR.—I desire to offer the register in evidence.

Mr. MORGANSTERN.—The only objection we have to its introduction is that it is immaterial.

The COURT.—The objection is overruled.

Mr. MORGANSTERN.—Exception.

WITNESS.—He was assigned a room on that occasion; my record shows that somebody occupied the rooms with him; it was a room—consisting of a suite of rooms; a man by the name of George and Sullivan and Vines occupied the suite, called 43; I don't recall whether or not they had any baggage; there were three men in two rooms, one bed in each room; I don't recall having seen the defendant Franklin at that hotel on that night; they came there about 8:30 in the evening George introduced them; George visited in the home room and I went in the home room with him; Mr. Sullivan *and* Mr. Sullivan and Mr. Vines went to their rooms; I never seen them after that; George was driving a car for the gentlemen who had registered; Mr. Vines made no statement as to how they came to El Centro; they left before I got up in the morning, which is about

(Testimony of D. J. Davidson.)

five o'clock; that would be the morning of December 23; I usually got up at five o'clock; it is hard to say whether or not I did that morning; it might have been half an hour later.

Cross-examination by Mr. MORGANSTERN.

When these three men came into the hotel together Mr. George spoke to me first; there were present Mr. George, Mr. Fullerton and this gentlemen here; I don't remember Mr. George or Mr. Fullerton; George said, just in a casual way, "How do you do?" and introduced his friends, or, rather they registered and I showed their rooms; it all depended on the management of the hotel what time I retired; I was day and night clerk; I ran the hotel; it is possible [74] that George asked me for an alarm clock so as to be able to get up on time; we had 8 or 9 that are left out for that purpose; George possibly knew we had them for that purpose; he had stopped there before; George was an acquaintance of mine and visited with my family and the people around the hotel at times; it was about half-past eight in the evening when they came into the hotel; I don't recall whether any of these three gentlemen asked for a call in the morning, as it is regular in a hotel; Mr. George was the man that introduced them to the hotel; he asked me for the rooms; I don't recall that he told me that he wanted rooms together; it is in a small room, where three come up and we have a suite ready for them, if agreeable to the boys; it is customary to ask them whether it is agreeable to stop together;

(Testimony of Belle M. Riggle.)

it is hard for me to tell whether I asked them on that occasion or not.

Testimony of Belle M. Riggle, for Plaintiff.

BELLE M. RIGGLE, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. O'CONNOR.

My name is Belle M. Riggle; in December, 1915, I was in the Castle Ray Hotel in El Centro; nobody here inside of this railing has been at my house that I know of; this is the register of the Castle Ray Hotel that I had when I was running the hotel in December, 1915; the names therein were registered upon the dates upon which they appear there.

Mr. O'CONNOR.—I desire to offer the register in evidence, your Honor, in connection with the handwriting of the defendant Morris Friedlander, upon the affidavit which is already filed in this case, unless the affidavit be admitted in evidence. The affidavit I will offer in evidence. It has already been filed in this case, your Honor. [75]

Testimony of Earl R. Fullerton, for Plaintiff.

EARL R. FULLERTON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. O'CONNOR.

My name is Earl R. Fullerton; I live in Los Angeles; I know the two defendants in this case, Mr. Vines and Mr. Franklin; I first met them in San Diego last December, on the night of the 21st; I only

(Testimony of Earl R. Fullerton.)

met one of them, Mr. Vines; I had a conversation with him at that time; I was running a stage line at that time, a sight-seeing car; I came down to the office and Mr. Dodge introduced me to Mr. Vines; he says, "This is the man who is going to make the trip with you to El Centro"; the defendant he introduced to me is Mr. Vines, this tall fellow; I asked him, "How many is going on the trip?" and he says, "Just two of us," and I told him, "The reason I asked you, I was thinking about asking my wife"; so he says, "No,"—there was just him and his brother, and I asked him what time he wanted to go; he says, "We want to start out early and get a good start before the heat of the day in the valley"; that was on the night of the 21st of December last year; next morning I came down to the car and met Mr. George and we went right from there; I didn't know where the hotel was at that time; as I turned the corner the two of them hollered at me and I came and picked them up and stopped at the Cecil for the suitcases; we picked up both Vines and Franklin there; then we went right from there to the stage office; they had brought the two suitcases out from the hotel with them; as nearly as I can remember there was two, the red and the black; they had a few other packages in their hands; they had no other grips; we went from there to the stage office; I telephoned from there and George came over and met us; I says, "Well, you are going to drive, you might as well start right now"; he got in to drive and I sat alongside of him and we started out; the grips were right

(Testimony of Earl R. Fullerton.)

in the back of the car; I didn't notice whether [76] they were heavy or light; I didn't pay any attention to anything until we stopped at the drug-store; we went to El Centro and asked them where they wanted to stop; they said, "Right over there"; we left San Diego on the morning of December 22d; we got to El Centro a little after noon; nobody else was in the car except George and the two defendants and I; before we started they hired me to go to El Centro and probably Brawley; for a three-day trip; Vines made the arrangement; he is the only man I did business with at the time or talked to; when we got to El Centro we stopped at the drug-store; Mr. Vines said, "We will stop right here," I says, "I guess you will want the suitcases," and he says, "Yes." I carried them into the drug-store and set them down; they were light; I asked them where they wanted them and Mr. Vines said, "Just leave them right there; I will take care of them." Then Vines said, "I guess I had better give you some money. You will need some money here." He says, "I will give you twenty-five now. I may go back and may not, and if I don't go back you will get your money." "Well, I says, "I ain't afraid. I guess the money is all right." I says, "I won't go, I have business to attend to, and my brother will go with you." That was around about noon sometime; when we left the Hotel Cecil in the *in the* morning it was about 5:30 or 6; Mr. Franklin and I and Mr. George stopped at a little cafe there and had our lunch. George told him; he says, "I have got a little

(Testimony of Earl R. Fullerton.)

business down there for probably an hour or two. If you want us you will know where to find us." "All right, I will go down with you." And he says, "No, I want to go down; I have a little business to attend to; I will just walk over." Franklin said that; he walked over and George drove the car over to the courthouse and stopped there and he went up to attend to his business; Franklin told us he would meet us at the Barbara Worth Hotel around between three and four o'clock that afternoon, but he told us we had to go to the courthouse first. Yes, sir; these men rented the car [77] from Dodge; I owned the car and Dodge had the business; I paid him a commission out of the business I got; about three or three-thirty that afternoon we went to the Barbara Worth Hotel; we were there quite a while sitting out in the back of the car, and Franklin came and sat and talked with us; George and I were sitting in the car; I asked Franklin if he wanted to go any place and he says, "No, I guess everything is all settled and we will not have to go to Brawley"; he says, "I don't know where he will want to go now until we see him. I have got some business to attend to up town and you don't need to go. I will go on up and meet you at 6 or 6:30 at the drug-store." We went back to the courthouse; we came to the drug-store after we had lunch and stayed there from 6 until pretty near seven; if he wasn't there we were to meet him at the Barbara Worth at 8; we didn't see him there; we left at seven and went back to the Barbara Worth; about 8 o'clock we were inside the

(Testimony of Earl R. Fullerton.)

Barbara Worth; we were waiting for Franklin but Vines came instead; he said his brother was very sick and was over at some friends' house; he says; "You haven't been over this road; if you want to take a trip we will go any place"; so we got in the car and went up to Imperial and got a glass of soda water and came back; Mr. Vines and Mr. George and myself went to Imperial; we put the car in the garage and told him to fill it with gas and oil; I told him, "I guess we will go over to the hotel now and go to bed." Vines says, "Yes, I want to leave tomorrow and get an early start." I told him, "Are you going with us"? He says, "Well, we might as well. We might as well stay together. My brother is over at his friends." I says, "All right, we might as well go over there"; we went over to the Panama Hotel, all three of us, and set around the fire and talked awhile and finally went to bed; I am pretty sure we registered.

Mr. MORGANSTERN.—It is stipulated he would testify the same as the last witness about that register and that hotel. [78]

WITNESS.—We didn't want to bother the landlord so I borrowed an alarm clock and set the clock for I think 4 o'clock; we got up and Mr. Vines went out and says, "I will be back in a few minutes"; we went downstairs and walked up the street and ate our lunch and then went and got the car, that is George and I, and met Mr. Vines at the bottom of the stairs; we all had lunch together and went and got the car; he says, "Now, we will drive over and

(Testimony of Earl R. Fullerton.)

get my brother and Mr. Franklin; we all drove over to the Castle Ray right after we got the car and picked his brother up; this was the morning of the 23d that we went to the Castle Ray, I should judge somewhere between four and 4:30 in the morning; Mr. Vines got out and went in after Franklin; both of them came out together; they picked the suitcases up at the Castle Ray; one defendant carried one and one the other; they set them right in the car, the red one first and the black one next to it, next to the back seat; I was going to get in the front seat with the driver and Mr. Vines said no, his brother was pretty sick, better put him in front next to the glass to keep him warm; so we wrapped the robe all around Franklin's neck and covered him up; I got in the back with Mr. Vines and we started for San Diego; when we got to Warren's Ranch we had our breakfast; we came on down the road and had a blow out; when we got to Spring Valley the sheriff and his party arrested the whole business; he stepped up to the car and we stopped at the watering-trough; George said he had to have water and the tire was pretty flat, and he said, "We will go across the street and get something"; in the meantime the sheriff walked over and wanted to know who was going; "Who owns these suitcases?" Mr. Vines spoke up and says, "Why, I do"; he says, "Take that one"; he took one and the sheriff picked up one; I grabbed one and put it over on the water-trough; the one I picked up was heavy; there was a difference in weight between this time and the time I handled it

(Testimony of Earl R. Fullerton.)

before at the drug-store in El Centro; the sheriff asked who had the keys for them and they said they didn't know; Mr. Vines said, "I don't know; they don't belong to me." [79] "Well," he says, "I will break them open"; "No," he says, "Go on down, I will just take the whole party right in"; he put Mr. Vines in the other car with the suitcases, and Franklin and I and George got in the other car and came on in to the county jail; I don't know where George is now; yes, I saw him here at the last term of court.

Cross-examination by Mr. MORGANSTERN.

At the time the sheriff and Mr. Landis met us at the watering-trough the sheriff wanted to know where the car was going; he then said, "Who do these grips belong to?" I don't know whether those are his words exactly; he says, "Who owns those grips?" and I think Mr. Vines said, "I do"; I didn't hear what Franklin said; I was back of the sheriff and Mr. Vines and very close to all of them; if Franklin said anything I would not necessarily have heard it because I was over on the other side of the car, walking around the back; no, I didn't hear Landis say anything about whose baggage it was at that time; immediately afterwards the sheriff wanted to know who had the keys for the suitcases; nobody answered then, and he turned to Vines and said, "Better give me the keys for the suitcase or I will break it open"; Vines says, "I don't know anything about the case"; I haven't got them; it don't belong to me"; the sheriff searched around him to see what he had, but I didn't see him go in his pockets for any

(Testimony of Earl R. Fullerton.)

keys; he didn't get any keys from him or Friedlander or me; the sheriff was standing there trying to open them with some keys he had in his hand, which he got out of his pocket; yes, he asked all of us about whose baggage it was when he says, "Who do they belong to," and when Vines said, "I do," that was all that was said about that; I am not positively sure about the keys; as I remember I think Mr. Vines gave him a few keys; Vines never referred to Friedlander as his brother in Friedlander's presence; Vines told me he had some presents in the grips, and packages that he was taking over [80] there; he had a lot of bundles with him; those packages were not brought back; yes, when George and Vines—or Gladstone—and I came to the Castle Ray Hotel, Mr. Gladstone went into the hotel and when he came out he brought Friedlander with him; yes, Friedlander had been sick on the trip going over; we had to take care of him on the trip; he was also sick coming back and we wrapped him up and put him in the front seat because of his physical condition; yes, he looked sick, but he walked at an ordinary rate of speed; after we three went to the Castle Ray Hotel Vines came out first with the red suitcase in his hand; I don't know which suitcase was heavier because I only lifted the red one; yes, Franklin came out with the other one in his hand; yes, more than likely I remember the preliminary examination in this case before Mr. Burch; I remember I was a witness there; I don't remember testifying that I helped put them in the automobile; I

(Testimony of Earl R. Fullerton.)

didn't; no, I don't remember testifying that I didn't know who brought them out of the hotel, that when I first saw them they were on the sidewalk with the two men and that I helped lift them into the automobile; I never had my hand on the suitcases until we hit the watering-trough; yes, I had my hand on them when I took them out at El Centro; then he went away with them; Franklin had nothing to do with them; he was in town all the rest of the day and saw us in the afternoon; yes, when I next saw the suitcases one of them was in Vines' hand and the other in Franklin's hand; I didn't see them putting them in; no, I didn't hear Mr. George's testimony at that time; I couldn't help seeing Friedlander carry one of those suitcases out; I was sitting on the right-hand side of the car looking in; the car is a left-hand drive; George did the driving; I did not testify at the preliminary examination that I did not know who brought the suitcases out because I had the hood up and was fixing my carbureter and didn't see the suitcases until they were on the sidewalk; I was not examining the front of the car or anything of that sort at the time these men came out of the hotel; I did not so testify; I have known Mr. [81] George since the latter part of last September or the first of October; no, I have not talked with any official of the Government, either the District Attorney's office or customs department, since the hearing before Judge Burch, about this case at any time; I talked to Mr. O'Connor and Mr. Moody about it in an offhand way; they asked me a few questions but

(Testimony of Earl R. Fullerton.)

not about the case; they didn't ask me what I would testify to; nor did any other member of the District Attorney's office; they never asked me and I never told them. Yes, I have been convicted of a felony in this state; yes, I have been convicted of a felony prior to coming to this state.

Testimony of William Carse, for Defendants.

WILLIAM CARSE, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. MORGANSTERN.

My name is William Carse; I am Deputy United States Marshal; I was present at the preliminary examination before the committing magistrate, C. E. Burch, in the matter now on trial; I heard the testimony of the witness Fullerton and a man named George; yes, the witness Fullerton testified upon the preliminary examination that the defendant Friedlander was a very sick man and that it was necessary to bundle him up and help him in the car and that he couldn't have lifted either of the grips.

Cross-examination.

I am positive that it was Mr. Fullerton who made that full statement, as to the lifting of the grips too. I was present during the biggest portion of the preliminary hearing; the hearing was the next day after the arrest, my records will show; I did not testify at that preliminary; besides George and Fullerton, Capt. Rynning, Paul Landis and W. B. Evans testified. [82]

Testimony of Morris Friedlander, in His Own Behalf.

MORRIS FRIEDLANDER, defendant herein, having been duly sworn as a witness on behalf of defendants testified as follows:

Direct Examination by Mr. MORGANSTERN.

My name is *Horace* Friedlander; I know my co-defendant, Mr. Gladstone; I have known him one year; I first knew him by the name of Gladstone after we were arrested; prior to that time I knew his name to be William Vines; I happened to go upon this trip to El Centro with him, because I met him in Los Angeles and he asked me how I felt; I told him I had been under a doctor's care for three years and he said he was going on a trip down the valley to look over the territory, that he intended opening up a chain of stores, if the country looked good, and that he might be able to put me in charge of one of the stores; I knew he was a dealer in all kinds of merchandise; I had met him first in San Francisco in auction places where they sell all kinds of merchandise, Government sales; at that time his business was buying of merchandise at auction sales; I have often seen him bid on articles; I and Gladstone came from Los Angeles to San Diego together; no, I did not register at the Cecil Hotel; Vines registered there; I did not see what names he placed upon the register; I was going to register and he says, "I have registered for you"; no, upon leaving the Hotel Cecil and going to El Centro I did not see any grips in the car; I first saw the grips when we arrived at El Centro; they stopped in front

(Testimony of Morris Friedlander.)

of the drug-store; I was sitting there with the car, and Fullerton got off the front seat and opened up the door where I was sitting and pulled the grip from beneath the blanket. I think it was; he took the grips in the drug-store; I couldn't swear that those are the grips that I saw at that time, there are hundreds of grips made like them, I didn't pay any attention to them; I was sick and was huddled up; after Fullerton had taken the grips out of the automobile [83] he took them into the drug-store; I did nothing, just sat there; Fullerton and Vines, I believe, got out of the automobile at that point and did not get back into the automobile; then Fullerton, George and I drove to the restaurant; Vines didn't get back into the car; during the afternoon that day I was around town, I met Fullerton and George in front of the Barbara Worth Hotel at 3 o'clock and remained with the boys for about an hour or so, and then left them, I think about 4:30; I said I would meet them at 6:30; I did not meet them at 6:30; I met Vines in front of the drug-store at 6:30; he asked me where the machine was, and I told him it was over at the Barbara Worth Hotel; he said, "You are looking ill," he said, "You had better go to bed"; I went to the Castle Ray Hotel and retired for the evening; I never had either of the grips in my hand at any time; I did not carry either of these grips out of the Castle Ray Hotel; I did not know either of these grips were at any time in the Castle Ray Hotel; I did not know at any time that either of these grips contained opium; I have

(Testimony of Morris Friedlander.)

never, either in this instance or any other, assisted in the transportation or carriage or importation of opium.

Cross-examination by Mr. O'CONNOR.

I am thirty-two years old; I have been a solicitor and cigar clerk in San Francisco; yes, that occupation would naturally take me to auction places to buy goods, shirts and shoes; I would not go as often as every day; besides I also met Mr. Vines at the Big Smoke House cigar-store; no, I met him at auctions before that; he was buying everything mentionable in large and small quantities; I bought small quantities; at these auction-houses the auctioneer sells job lots and I bought in lots; I don't remember who introduced me to Vines; it was about a year prior to September, 1915, two years ago at this time, that I met him; [84] during the year that I knew him prior to the trip we made to El Centro, I would probably see him once a week, maybe twice a week; we became friendly; we would walk a block or two or five together and I would have a drink with him, or go to places of amusement with him; I knew nothing wrong about the man; he had a reputation of being a very shrewd buyer and dealer in merchandise of all kinds; he first suggested to me that he might take me into business with him when I met him in Los Angeles; I was in Los Angeles to arrange for going into business; I believe it was December 21 when I met him in Los Angeles; I got there that morning; I don't know how long he had been there; I have no idea what he was doing there; I met him

(Testimony of Morris Friedlander.)

in a restaurant, I believe it was the St. Elmore; I just happened to meet him there; I did not know where he was stopping; I had just been there about an hour; I was going up to see my old office; I did not know Vines was in Los Angeles; when I first met him and until after we were arrested I knew him under the name of William Vines; when I met him on December 21 he told me he was going down the valley; he said it was a good country to go in business; he asked me to take the trip with him; I went down at his invitation; I don't know what kind of business, handling goods; he had a chain of stores called the Live Wire, about six months previous to that; one was on Mission Street, in San Francisco; I believe all of them were located in San Francisco; at the time I was talking to him in Los Angeles I think he said he had sold out; he lost considerable money in the venture; at the time I met Vines in Los Angeles I was a solicitor; previous to that I had solicited for L. Becker in San Francisco; I was going to Los Angeles to solicit for myself; I often did; I had a man named Magenson in the Johnson Building do the work for me; Vines knew me by my right name, Friedlander; my true name is Morris Friedlander; I don't know if he knew my first name; he called me Morwy; I couldn't say what my particular occupation was going to be in these stores; I was not much bent on the venture of going into business but I was feeling ill and thought the trip [85] would do me some good; no, I was not going to put any money in with Vines in those stores; we had no

(Testimony of Morris Friedlander.)

understanding in reference to what position I was to have in the stores or where the stores *or where the stores* were to be located; he didn't tell me in Los Angeles where we were first going on this trip, no particular place; we came from Los Angeles to San Diego by stage at 2 o'clock on December 21st; I didn't see Vines have any grips with him when we left Los Angeles on the stage; there were other people on the stage; I met him in front of the office where he engaged the machine in the same block where I met him in the restaurant; I had no baggage with me for if I was not successful in Los Angeles I was going to return to San Francisco; when we were on our way—when we left here, San Diego, he said he was going to El Centro; when we came to San Diego we went to the Cecil Hotel and both stayed in the same room that night; we had no conversation about this business project we were going into over in the valley; he said he was going out to see some business friend, and for me to go to bed; I had been sick right along; I had been ailing for three years; I didn't see any grips until we reached El Centro; I don't say that the testimony of the witnesses to the effect that they were carried out of the Cecil Hotel in my presence is all wrong; I didn't see them; yes, that black grip is really a sample case, the kind of case solicitors use in their business; I don't know if cigar solicitors use that kind of cases; I don't know who those grips belong to that were in that car; I don't know how long Vines had been in Los Angeles when I met him or where he came from; no, he didn't say where he was

(Testimony of Morris Friedlander.)

stopping; on the way to El Centro Vines said nothing about this projected business we were going into; when I met him in Los Angeles it had been about three weeks to a month since I had seen him in San Francisco; no, I had never had any experience in handling stores of the kind he was going to open up down the valley; no, I had never worked in a store of that kind, I had no experience at all in that kind of business; nobody that I know of was going to be financially interested in [86] this project with Vines; when we got to El Centro I went to the Castle Ray Hotel and stopped there that night; yes, I registered; Vines told me that he had a brother that he expected in town and for me to engage a room for his brother, and because I was going I suggested that I engage rooms for Vines and myself; he says, no his brother made this appointment; in that case, why, one of us would share the room, occupy the room; when I went there there was a gentleman there; I asked him for a room; he said that the landlady was out but he would show me a room and I could pay her in the evening when she returned; I told him I engaged the room for a friend of mine and that if he failed to show up I would occupy it or my friend would that I was with; he says, "All right"; he assigned me to a room, and I went out that day and met Fullerton at 4:30 and then met Vines in the evening and returned to the hotel and the landlady hadn't returned; I waited around until 9 o'clock and then walked out; when I came back she still wasn't there; I went to my room to retire, but having no baggage

(Testimony of Morris Friedlander.)

I thought she might disturb me and knock at my door, and I thought best to stay up and wait until she came; I walked out again I believe at 10 o'clock; she just entered the hall and I gave her the dollar and then retired; yes, I registered for Vines, for his brother; yes, that signature "R. Vines" in the register of the Castle Ray Hotel is my signature; I don't know why I didn't stop at the Castle Ray Hotel with Vines that night, and Fullerton and George; he told me to retire as I was feeling ill; I thought Vines was going to stop there too and I told him I was stopping there; he said he was over to the hotel before he had seen me; he said he noticed I had registered there for his brother; no, Vines did not give any explanation why he didn't stop at the Castle Ray Hotel; I didn't know he was going to stop at another hotel; he didn't say he would; I didn't ask him anything about that and I didn't know until the next day where he was stopping; yes, I was present when Vines got out at the drug-store upon arrival at El Centro and I saw the grips at that time; they were taken at that time into the drug-store by Fullerton; it was when we were coming [87] into El Centro that I had the conversation with Vines about registering at the Castle Ray Hotel; no, I didn't see these grips at the hotel Castle Ray at all, and I didn't see them brought out to the machine next morning; yes, we left about four o'clock in the morning to come back to San Diego; yes, I heard the testimony of Captain Rynning yesterday, and Paul Landis, deputy sheriffs, to the effect that when I got to the

(Testimony of Morris Friedlander.)

jail I gave the name of Franklin; I did that because I didn't want my people to know that I was arrested; I didn't use my own name at the Castle Ray Hotel because Vines directed me to register for his brother; I did not have any idea at the time where Vines was going to stop; no, I did not expect to occupy the same room with Vines' brother that night.

Redirect Examination.

When the officers accosted us in the automobile the first thing said was, "Pile out. You are all under arrest"; after that, after I asked George what the trouble was, I turned around and Captain Rynning was addressing Vines; he asked for the keys, and Vines says, "I have no keys"; no, sir; I didn't at any time state that "These are ours" or "I own them" or "I do," or anything of that kind.

Los Angeles, California, Monday, October 2d, 1916.

10 A. M.

The following proceedings were had at the time set for sentence of the defendants William Vines and H. Franklin.

The COURT.—United States against William Vines and H. Franklin.

Mr. MORGANSTERN.—If the Court please, this is the time fixed for sentence of the defendants William Vines and H. Franklin, and at this time the defendants move that the Court continue the time of passing sentence on the defendants to some later date sufficient in time to permit these defendants to have their application for executive clemency passed upon by the President of the United States. The

application for executive clemency has been [88] made and is now pending before the President of the United States. The grounds upon which this application for executive clemency is being made are the same that have already been gone into in detail before your Honor prior to the trial of this cause, and these defendants are making this motion at this time, based upon the same grounds heretofore made, because at the time this motion was made before at the trial of this cause, the United States Attorney opposed the defendants' motion for a continuance on the ground that the proper time to make such an application to the President of the United States was after conviction and not prior thereto. Therefore to save our rights in the premises we now renew the motion for a continuance of the time fixed for pronouncing sentence until the defendants' application for executive clemency can be passed upon by the President of the United States.

The COURT.—Motion denied.

The defendants, William Vines and H. Franklin, hereby present the foregoing as their proposed bill of exceptions herein, and respectfully ask that the same may be allowed.

Attorney for Defendants. [89]

TO ALBERT SCHOONOVER, Esq., United States
District Attorney:

Sir: You will please take notice that the foregoing constitutes and is the proposed Bill of Exceptions of the defendants William Vines and H. Franklin in

the above-entitled action, and that said defendants will ask the allowance of the same.

A. J. MORGANSTERN,

PAUL W. SCHENCK,

Attorneys for Defendants.

It is hereby stipulated that the foregoing Bill of Exceptions is correct and that the same be settled and allowed by the Court.

A. J. MORGANSTERN,

PAUL W. SCHENCK,

Attorneys for Defendants.

Attorney for the United States.

This bill of exceptions having been presented to the Court, and having been amended to correspond to the facts, is now signed and made a part of the records in this cause, the question as to whether presented in time is submitted to Court of Appeal.

OSCAR A. TRIPPET,

Judge. [90]

[Endorsed]: No. 1063—Crim. In the United States District Court for the Southern District of California, Southern Division. The United States of America, Plaintiffs, vs. William Vines and H. Franklin, Defendant. Defendants' Proposed Bill of Exceptions. Received copy of the within this 12 day of Oct., 1916. Robert O'Connor, Asst. U. S. Atty. Filed Oct. 12, 1916. Wm. M. Van Dyke, Clerk. By Geo W. Fenimore, Deputy Clerk. Paul W. Schenck, 619-26 Homer Laughlin Bldg. Los Angeles, Cal., Main 1005, F2151, Attorney for Defendants.

[Endorsed]: Re-filed June 28, 1917. Wm. M. Van Dyke, Clerk. By Geo. W. Fenimore, Deputy Clerk, as Approved and Allowed Bill of Exceptions. [91]

In the District Court of the United States, in and for the Southern District of California, Southern Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM VINES and H. FRANKLIN,

Defendants.

Petition for Writ of Error.

Your petitioners, William Vines and H. Franklin, the defendants in the above-entitled cause, bring this, their Petition for Writ of Error, to the District Court of the United States, in and for the Southern District of California, Southern Division, and in that behalf your petitioners say:

That on the 13th day of September, 1916, there was made, given, rendered and entered in the above-entitled Court a verdict against your petitioners, wherein and whereby your petitioners, the said William Vines and H. Franklin, were found guilty as charged in the indictment in the above-entitled cause. That thereafter, on the 2d day of October, 1916, your petitioner, William Vines was sentenced to confinement in the penitentiary for a period of eighteen months; and your petitioner H. Franklin was sentenced to confinement in the County Jail for a period of six months; that your petitioners say that they are

advised by counsel and aver that there was and is manifest error in the record and proceedings had in such cause and in the making, giving, rendition and entry of such judgments and sentences, to the injury and damage of your petitioners, all of which error will be more fully made to appear by an examination of said record, and by an examination of the bill of exceptions to be hereafter by your petitioners tendered and filed, and in the assignment of errors hereinafter set [92] out, and to the end hereafter that the said judgments, sentences and proceedings may be reviewed by United States Circuit Court of Appeals for the Ninth Circuit, your petitioners now pray that a Writ of Error may be issued, directed therefrom to the said District Court of the United States for the Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there may be directed to be returned, pursuant thereto, a true copy of the record, bill of exceptions, assignment of errors, and all proceedings had and to be had, in said cause; that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected and full and speedy justice done your petitioners.

And your petitioners now make the assignment of errors attached hereto, upon which they will rely and which will be made to appear by a return of the said record in obedience to said Writ.

WHEREFORE, your petitioners pray the issuance of a Writ as herein prayed, and pray that the assignment of errors annexed hereto may be consid-

ered as the assignment of errors upon the Writ, and that the judgment rendered in this cause may be reversed and held for naught, and that said cause may be remanded for further proceedings and that they be awarded a *supersedeas* upon said judgment and all necessary process, including bail.

WILLIAM VINES,
Petitioner.

H. FRANKLIN,
Petitioner.

A. J. MORGANSTERN,
PAUL W. SCHENCK,
Attorneys for Defendants.

[Endorsed]: No. 1063—Crim. In the United States District Court, for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. William Vines and H. Franklin, Defendant. Petition for Writ of Error. Filed Oct. 2, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Paul W. Schenck, 619-26 Homer Laughlin Bldg., Los Angeles, Cal., Attorney for Defendants, Main 1005, F2151. [93]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIM VINES and H. FRANKLIN,
Defendants.

Assignment of Errors.

William Vines and H. Franklin, the defendants in the above-entitled cause and plaintiffs in error herein, having petitioned for an order from the above-entitled Court permitting them to procure a Writ of Error from said Court, directed to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment and sentence made and entered in said cause against the said William Vines and the said H. Franklin, plaintiffs in error and petitioners herein now make and file with their said petition the following assignment of errors herein, upon which they will rely for a reversal of said judgment and sentence upon the said writ, and which said errors and each and every of them are to the great detriment and injury and prejudice of the said defendants, and in violation of the rights conferred upon them, and they say that in the record of proceedings had in the above-entitled cause upon the hearing and determination thereof in the District Court of the United States for the Southern District of California, Southern Division, there is manifest error in this, to wit:

I.

That the Court erred in denying the motion of the defendants above named for a continuance of the trial of the above-entitled cause. Said motion for continuance being made for the purpose [94] of submitting to the President of the United States an application for executive clemency in the above-entitled cause, on behalf of the said defendants.

II.

That the Court erred in overruling the objection of the defendants to the question put to the witness Thomas L. Rynning: Q. "What conversation did you have in the presence of these defendants when you first went up to the automobile?" Said objection being taken as follows: "We object to any conversation held by or in the presence of the defendants, which seeks to elicit any possible statement by the defendant or actions of the defendants, upon the ground that it is incompetent, irrelevant and immaterial, until the *corpus delicti* shall have first been established," and the defendants' exception to the ruling on said objection was duly and regularly taken and allowed.

III.

That the Court erred in overruling the motion of the defendants above named for a continuance of the time for pronouncement of judgment and sentence in the above-entitled cause upon said defendants. Said motion for continuance being made for the purpose of submitting to the President of the United States an application for executive clemency in the above-entitled cause, on behalf of said defendants.

IV.

That the Court erred in refusing to give the following instruction to the jury, as requested by the defendants: "You are instructed that the evidence adduced in this case is insufficient to warrant or sustain a conviction of the defendants, or either of them, and I therefore instruct you to find the defendants not guilty on said indictment." [95]

V.

That the Court erred in pronouncing sentence against the defendants.

A. J. MORGANSTERN,
PAUL W. SCHENCK,
Attorneys for Defendants.

United States of America,
Southern District of California,
Southern Division,—ss.

We hereby certify that the foregoing assignment of errors are made on behalf of the petitioners for Writ of Error herein, and in my opinion well taken, and that the same now constitute the assignment of errors upon the writ prayed for.

A. J. MORGANSTERN,
PAUL W. SCHENCK,
Attorneys for Plaintiffs in Error.

[Endorsed]: No. 1063—Crim. In the United States District Court, for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. William Vines and H. Franklin, Defendants. Assignment of Errors. Filed Oct. 2, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Paul W. Schenck, 619-26 Homer Laughlin, Bldg., Los Angeles, Cal., Main 1005, F2151, Attorney for Defendants. [96]

*In the District Court of the United States in and
for the Southern District of California, South-
ern Division.*

1063—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM VINES and H. FRANKLIN,

Defendants.

Order Allowing Writ of Error and Supersedeas.

Upon motion of Paul W. Schenck, attorney for the defendants William Gladstone, *alias* William Vines, and Morris Friedlander, *alias* H. Franklin, and upon filing the petition for a writ of error and assignment of errors, IT IS HEREBY ORDERED that a writ of error be, and hereby is allowed to have reviewed in the United States Circuit Court of Appeals, for the Ninth Circuit, the verdict and judgment heretofore entered herein. That pending decision upon said writ of error, the supersedeas prayed for by the defendants in their petition for a Writ of Error herein, is hereby allowed upon the giving by the defendant William Gladstone, *alias* William Vines of bail in the sum of \$5,000, and upon the giving by the defendant Morris Friedlander, *alias* H. Franklin, of bail in the sum of \$2,000.

Done in open court this 2d day of October, 1916.

OSCAR A. TRIPPET,

District Judge of the United States District Court
for the Southern District of California, South-
ern Division.

[Endorsed]: No. 1063—Crim. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America, Plaintiff, vs. William Vines and H. Franklin, Defendants. Order Allowing Writ of Error and Supersedeas. Filed Oct. 2, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [97]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California.

CLERK'S OFFICE.

No. 1063—CRIM.

A. GLADSTONE, *alias* W. H. VINES,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA.

Praecipe for Transcript of Record.

To the Clerk of said Court:

Sir: Please issue Transcript in above-entitled matter making true records of the following for record on appeal:

1. Judgment-roll.
2. Petition for Writ of Error.
3. Assignment of Errors.
4. Writ of Error.
5. Citation to Writ of Error.
6. Bill of Exceptions.

A. J. MORGANSTERN,
Atty. for Plaintiff in Error.

[Endorsed]: No. 1063—Criminal. U. S. District Court, Southern District of California, Southern Division. United States of America vs. Vines et al. Praeceptum for Transcript. Filed Jul. 2, 1917, at 2 min. past 10 o'clock A. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. [98]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 1063—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

WILLIAM VINES, True Name ALEXANDER
GLADSTONE, and H. FRANKLIN, True
Name MORRIS FRIEDLANDER,

Defendants.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing ninety-eight typewritten pages, numbered from 1 to 98, inclusive, and comprised in one volume, to be a full, true and correct copy of the Judgment-roll, Bill of Exceptions, Petition for Writ of Error, Assignment of Errors, Order Allowing Writ of Error, and Supersedeas, and Praeceptum for Transcript in the above and therein entitled action, and that the same together constitute the record in said action as specified in the said Praeceptum filed in

my office on behalf of the plaintiffs in error by their attorneys of record.

I do further certify that the cost of the foregoing record is \$25.25, the amount whereof has been paid me by the plaintiffs in error herein.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, this 3d day of July, in the year of our Lord one [99] thousand nine hundred and seventeen and of our Independence the one hundred and forty-first.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States of
America, in and for the Southern District of
California. [100]

[Endorsed]: No. 3017. United States Circuit Court of Appeals for the Ninth Circuit. William Gladstone, *alias* William Vines, and Morris Friedlander, *alias* H. Franklin, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Filed July 5, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the sixth day of June, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable MAURICE T. DOOLING, District Judge.

WILLIAM GLADSTONE, *alias* WILLIAM VINES,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Order Enlarging Time to File Transcript of Record.

Upon motion of Mr. Benjamin L. McKinley, counsel for the plaintiff in error, and good cause therefor appearing, ORDERED plaintiff in error granted thirty (30) days from and after this 6th day of June, A. D. 1917, to file with the clerk of this Court a certified typewritten Transcript of Record in the above-entitled cause.